SUPREME COURT OF THE UNITED STATES.

No. 402.

THE SHIP "STAR OF HOPE," &c., APPELLANTS,

vs.

W. C. ANNAN ET AL., APPELLEES.

AN APPEAL FROM THE CIRCUIT COURT, DISTRICT OF CALIFORNIA.

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In the District Court of the United States for the northern district of California.

WILLIAM C. ANNAN *et al.*, appellees,
vs.
SHIP "STAR OF HOPE," Henry Pearsons, claimant, &c., and appellant.
} In admiralty.

JESSE SAWYER
vs.
SAME.

ADRAIN & STOREY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

BENJ. T. NESBITT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

BOND & HALE
vs.
SAME.

JONES & STEVENS
vs.
SAME.

CROSBY & DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

PARK & WHITE
vs.
SAME.

JAMES W. EMBURY
vs.
SAME.

I, W. H. Chevers, clerk of the District Court of the United States for the northern district of California, do hereby certify that the appeal in the foregoing causes from this court to the Circuit Court of the United States for districts of California, has been perfected.

Witness my hand and the seal of the said court, this first day of October, A. D., 1860.

[SEAL.] W. H. CHEVERS, Clerk.

Endorsed: Filed Oct'r, 1860. Cutler McAllister, Clerk.

1 United States District Court for the northern district of California.—In admiralty.

Libel.—(*Annan et al.*)

To the honorable Ogden Hoffman, jr., judge of the District Court of the United States for the northern district of California:

The libel of William C. Annan, William H. Tallmage, and James W. Embury, composing the late firm of Annan, Tallmage & Company, merchants, formerly transacting business in the city of New York, and in the city and county of San Francisco, State of California, against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Somerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein in a cause of contract, civil and maritime, alleges as follows, to-wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying
2 in the port of New York, did receive on board certain valuable goods, wares, and merchandise belonging to these libellants, for the purpose and with the undertaking, on the part of the owners and master thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to these libellants.

Second. That afterwards, to wit, on the 10th day o
the said ship did in fact sail from the said port of New Y
said goods, wares, and merchandise on board, on a voya
said last-mentioned port to the port of San Francisco afore

Third. That during the said voyage, to wit, on or abo
day of April, the said ship, in entering or attempting t
port of San Antonio, accidentally grounded or stranded u
or shoal, whereby she became so greatly injured and da
render it necessary to repair in order to continue and c
voyage aforesaid, whereupon the said master put the sa
the port of Montevideo for such repairs.

3 Fourth. That while in the said port of Montevid
master, alleging that he was without the money
other means to defray the expense of such repairs, sold
valuable portion of the goods, wares, and merchandise l
and shipped as aforesaid by these libellants, to wit, of t
fourty-four thousand seven hundred dollars, and with th
thereof paid for the said repairs.

Fifth. That the necessary repairs having been thus mad
ship continued on the voyage aforesaid. and on or about t
day of December arrived at the port of San Francisco afor

Sixth. That by reason of such sale the said goods, ware
chandise became and were wholly lost to these libellan
damage of these libellants in the said sum of forty-four thousand seven hundred dollars. Yet the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum or any part thereof to these libellants.

4 Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore the libellants pray that process, in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath all and singular the matters aforesaid; and that this honorable court would be pleased to decree the payment of the amount so due to the libellants as aforesaid, with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

JAS. W. EMBURY.

Sworn and subscribed before me, March 20, 1857.

W. H. CHEVERS,
Deputy Clerk.

J. P. HAVEN,
Proctor.

Endorsed: Filed March 20, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

PARK & WHITE
vs.
SAME.

JAMES W. EMBURY
vs.
SAME.

I, W. H. Chevers, clerk of the District Court of the United States for the northern district of California, do hereby certify that the appeal in the foregoing causes from this court to the Circuit Court of the United States for districts of California, has been perfected.

Witness my hand and the seal of the said court, this first day of October, A. D., 1860.

[SEAL.] W. H. CHEVERS, Clerk.

Endorsed: Filed Oct'r, 1860. Cutler McAllister, Clerk.

1 United States District Court for the northern district of California.—In admiralty.

Libel.—(*Annan et al.*)

To the honorable Ogden Hoffman, jr., judge of the District Court of the United States for the northern district of California:

The libel of William C. Annan, William H. Tallmage, and James W. Embury, composing the late firm of Annan, Tallmage & Company, merchants, formerly transacting business in the city of New York, and in the city and county of San Francisco, State of California, against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Somerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein in a cause of contract, civil and maritime, alleges as follows, to-wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying
2 in the port of New York, did receive on board certain valuable goods, wares, and merchandise belonging to these libellants, for the purpose and with the undertaking, on the part of the owners and master thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to these libellants.

Second. That afterwards, to wit, on the 10th day of February, the said ship did in fact sail from the said port of New York with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the 18th day of April, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid, whereupon the said master put the said ship into the port of Montevideo for such repairs.

3 Fourth. That while in the said port of Montevideo, the said master, alleging that he was without the money, credit, or other means to defray the expense of such repairs, sold a large and valuable portion of the goods, wares, and merchandise belonging to and shipped as aforesaid by these libellants, to wit, of the value of fourty-four thousand seven hundred dollars, and with the proceeds thereof paid for the said repairs.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December arrived at the port of San Francisco aforesaid.

Sixth. That by reason of such sale the said goods, wares, and merchandise became and were wholly lost to these libellants, to the damage of these libellants in the said sum of forty-four thousand seven hundred dollars. Yet the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum or any part thereof to these libellants.

4 Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore the libellants pray that process, in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath all and singular the matters aforesaid; and that this honorable court would be pleased to decree the payment of the amount so due to the libellants as aforesaid, with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

JAS. W. EMBURY.

Sworn and subscribed before me, March 20, 1857.

W. H. CHEVERS,
Deputy Clerk.

J. P. HAVEN,
Proctor.

Endorsed: Filed March 20, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

5 District Court of the United States for the northern district of California.

Libellants' stipulation for costs.—Filed the 20th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court, on the 20th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by W. C. Annan *et als.*, against the ship "Star of Hope," for reasons and causes in the said libel mentioned; and the said Jas. W. Embury, and John C. Hewlett and Wm. Adrain, his sureties, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the said libellants, or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound, in the sum of five hundred dollars, conditioned the libellants above-named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal by the appellate court.

JAS. W. EMBURY.
JOHN C. HEWLETT.
6 WM. ADRAIN.

Taken and acknowledged, this 20th day of March, 1857, before me.
W. H. CHEVERS,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss*:

John C. Hewlett and Wm. Adrain, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOHN C. HEWLETT.
WM. ADRAIN.

Sworn to this 20th day of March, 1857, before me.
W. H. CHEVERS,
U. S. Commissioner.

Monition.

NORTHERN DISTRICT OF CALIFORNIA, *ss*:

The President of the United States of America to the marshal of the northern district of California, greeting:

7 Whereas a libel hath been filed in the District Court of the United States for the northern district of California, on the 20th day of March, in the year of our Lord one thousand eight

hundred and fifty-seven, by W. C. Annan *et al.*, against the ship "Star of Hope," her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say, why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern district of California, on the 31st day of March next, at eleven o'clock in the forenoon of
8 the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Hon. Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California, this 20th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.] JOHN A. MONROE, *Clerk.*
By W. A. CHEVERS, *Deputy.*
J. P. HAVEN,
Proctor for libellants.

In obedience to the within monition, I attached the ship therein described, on the 20th day of March, and have given due notice to all persons claiming the same, that this court will, on the 31st day of March inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 20th, 1857.

JAS. Y. McDUFFIE.
9 *U. S. Marshal.*
By E. O. HASTINGS, *Deputy.*

Endorsed: Filed March 31st, 1857. John A. Monroe, clerk, by W. A. Chevers, deputy.

U. S. Dist. Court, Nor. Dist. California.—In Admiralty.

Substitution of proctor.

W. C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE." } Libel.

C. Temple Emmet is substitued as proctor in the above-entitled cause.

March 31, 1857.

J. P. HAVEN, *Proctor.*

Endorsed: Filed March 31, 1857. John A. Monroe, clerk, by W. A. Chevers, deputy.

10 At a stated term of the District Court of the United States of America, for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday the 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the honorable Ogden Hoffman, jr., district judge.

Order on return of monition.

W. C. ANNAN *et als.*
vs.
SHIP "STAR OF HOPE." }

The marshal having returned upon the monition in this cause, that he had attached the said ship, her tackle, &c., and had given due notice to all persons claiming the same, that this court would, on this day, proceed to the trial and condemnation thereof, should no claim be interposed for the same.

On motion of C. Temple Emmet, proctor for the libellants, proclamation was made for all persons having anything to say why the said ship should not be condemned and sold, to answer the prayer of the libellant, to appear. Eugene Casserly, esq., appeared for
11 the claimants, and on motion was allowed ten days to file answer. On like motion, it was ordered that default of all parties not in court be taken.

Endorsed: Filed March 31st, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

United States District Court for the northern district of California.—In Admiralty.

Libel.—(Adrain & Story.)

To the honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of William Adrain and William F. Story, composing the

firm of Adrain & Story, merchants, transacting business in the city of San Francisco, intervening for their claim and interests against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Sowerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows, to wit:

12

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable goods, wares, and merchandise, belonging to these libellants, for the purpose, and with the undertaking, on the part of the owners and master thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to these libellants.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did, in fact, sail from the said port of New York, with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

13

Third. That during the said voyage, to wit, on or about the eighteenth day of April, of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid; whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo, the said master, alleging that he was without the money, credit, or other means to defray the expense of such repairs, sold a large and valuable portion of the goods, wares, and merchandise belonging to and shipped as aforesaid by these libellants, to wit, of the value of three hundred and twenty-five dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

14

Sixth. That by reason of such sale, the said goods, wares, and merchandise became and were wholly lost to these libellants, to the damage of these libellants in the sum of three hundred and twenty-five dollars. Yet the owners and master of the said ship, although duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum, or any part thereof, to these libellants.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore the libellants pray that process, in due form of law,

according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein, may be cited to appear and to answer, upon oath, all and singular the matters aforesaid; and that this honorable court would be pleased to decree
15 the payment of the amount so due to the libellants as aforesaid, with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

WM. ADRAIN.

Sworn to and subscribed, March 30, 1857, before me.

JNO. A. MONROE,
U. S. Com.
J. P. HAVEN, *Proctor.*

Endorsed: Filed March 30, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

16 District Court of the United States for the northern district of California.

Libellants' stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas, a libel was filed in this court on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by William Adrain, against the ship "Star of Hope," for reasons and causes in the said libel mentioned, and the said William Adrain, and Jas. W. Embury and E. V. Joice, his sureties, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the said libellants, or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, thereby, it is stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the libellants above named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal by the Appellate Court.

WM. ADRAIN.
17 J. W. EMBURY.
E. V. JOICE.

Taken and acknowledged, this 30th day , 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

J. W. Embury and E. V. Joice, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

E. W. EMBURY.
E. V. JOICE.

Sworn to, this 30th day of March, 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

Monition.

18 NORTHERN DISTRICT OF CALIFORNIA, *ss:*

The President of the United States of America, to the marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States, for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by Adrain and Story, against the ship "Star of Hope," her tackle, apparel, and furniture, for breach of contract of affreightment, claiming $325 for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made; and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demand of the libellant.

You are, therefore, hereby commanded to attach the said
19 ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they do and appear before the said court to be held in and for the northern district of California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise, on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.] JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*
J. P. HAVEN,
Proctor for Libellant.

according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein, may be cited to appear and to answer, upon oath, all and singular the matters aforesaid; and that this honorable court would be pleased to decree
15 the payment of the amount so due to the libellants as aforesaid, with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

WM. ADRAIN.

Sworn to and subscribed, March 30, 1857, before me.

JNO. A. MONROE,
U. S. Com.
J. P. HAVEN, *Proctor.*

Endorsed: Filed March 30, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

16 District Court of the United States for the northern district of California.

Libellants' stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas, a libel was filed in this court on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by William Adrain, against the ship "Star of Hope," for reasons and causes in the said libel mentioned, and the said William Adrain, and Jas. W. Embury and E. V. Joice, his sureties, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the said libellants, or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, thereby, it is stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the libellants above named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal by the Appellate Court.

WM. ADRAIN.
17 J. W. EMBURY.
E. V. JOICE.

Taken and acknowledged, this 30th day , 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

J. W. Embury and E. V. Joice, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

E. W. EMBURY.
E. V. JOICE.

Sworn to, this 30th day of March, 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

Monition.

18 NORTHERN DISTRICT OF CALIFORNIA, *ss:*

The President of the United States of America, to the marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States, for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by Adrain and Story, against the ship "Star of Hope," her tackle, apparel, and furniture, for breach of contract of affreightment, claiming $325 for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made; and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demand of the libellant.

You are, therefore, hereby commanded to attach the said
19 ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they do and appear before the said court to be held in and for the northern district of California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise, on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.] JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*
J. P. HAVEN,
Proctor for Libellant.

20 In obedience to the within monition, I attached the ship therein described on the 31st day of March, and have given due notice to all persons claiming the same, that this court will on the 7th day of April inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction therefor,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 31, 1857.

JAS. T. McDUFFIE,
U. S. Marshal.
P'r C. PALMER, *Dep.*

MAR. 31, 1857.

Service admitted.

EUGENE CASSERLY,
For Claimant.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

21 United States District Court for the northern district of California.—In admiralty.

Libel.—(*D. R. Provost.*)

To the honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of D. R. Provost, merchant, transacting business in the city of San Francisco, intervening for his claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Somerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows, to wit:

First. That the said ship some time in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable goods, wares, and merchandise, belonging to this libellant for the purpose and with the undertaking, on the part of the owners and master
22 thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to this libellant.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did in fact sail from the said port of New York, with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April, of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidently grounded or stranded upon a bank or shoal, whereby she became so greatly

injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid. Whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo, the said
23 master, alleging that he was without the money, credit, or other means to defray the expenses of such repairs, sold a large and valuable portion of the goods, wares, and merchandise belonging to and shipped as aforesaid by this libellant, to wit, of the value of two thousand one hundred and ninety-six dollars.

Fifth. That the necessary repairs having been thus made, the ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That by reason of such sale, the said goods, wares, and merchandise became and were wholly lost to this libellant, to the damage of this libellant in the said sum of two thousand one hundred and ninety-six dollars.

Yet the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum, or any part thereof, to this libellant.

24 Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that process, in due from of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the libellant aforesaid, with costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

D. R. PROVOST.
J. P. HAVEN, *Proctor.*

Sworn to and subscribed, March 30, 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

Endorsed: Filed March 30, 1857, John A. Monroe, clerk, by W. H. Chevers, deputy.

25 District Court of the United States for the northern district of California.

Libellant's stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by D. R. Provost, against the ship "Star of Hope," for reasons and

causes in the said libel mentioned, and the said D. R. Provost, and W. Adrain and J. W. Embury, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said libellants or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is bound in the sum of five hundred dollars, conditioned the libellant above-named shall pay all costs and charges that may be awarded against them, in any decree by this court, or in case of appeal by the Appellate Court.

D. R. PROVOST.
W. ADRAIN.
J. W. EMBURY.

26 Taken and acknowledged, this 30th day of March, 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

W. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. ADRAIN.
J. W. EMBURY.

Sworn to, this 30th day of March, 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

27 *Monition.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

The President of the United States of America, to the marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by D. R. Provost, against the ship "Star of Hope," her tackle, apparel, &c., for breach of contract of affreightment, claiming the sum of $2,196, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are, therefore, hereby commanded to attach the said
28 ship or vessel, her tackle, &c , and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern district of California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jur., judge of said court, at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.] JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*
J. P. HAVEN,
Proctor for Libellant.

29 In obedience to the within monition, I attached the ship therein described, on the 31st day of March, and have given due notice to all persons claiming the same, that this court will, on the 7th day of April, inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 31, 1857.

JAS. Y. McDUFFIE,
U. S. Marshal.
P'r C. PALMER, *Deputy.*

MARCH 31, 1857.

Service admitted.

EUGENE CASSERLY,
For Claimant.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

30 United States District Court for the northern district of California.—In admiralty.

Libel.—(D. H. Burke.)

To the Honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of David H. Burke, merchant, transacting business in the

city of San Francisco, intervening for his claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Sowerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows, to wit:

First. That the said ship, some time in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable goods, wares, and merchandise belonging to this libellant, for the purpose
31 and with the undertaking, on the part of the owners and master thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to this libellant.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did in fact sail from the said port of New York, with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid; whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo, the said
32 master, alleging that he was without the money, credit, or other means to defray the expense of such repairs, sold a large and valuable portion of the goods, wares, and merchandise, belonging to and shipped as aforesaid by this libellant, to wit, of the value of two thousand eight hundred and eighty-seven 50-100 dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That by reason of such sale the said goods, wares, and merchandise became and were wholly lost to this libellant, to the damage of this libellant in the said sum of two thousand eight hundred and eighty-seven 50-100 dollars. Yet the owner and master of the said ship, although hereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum or any part thereof to this libellant.

Seventh. That all and singular the premises are true and
33 within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore the libellant prays that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction may issue against the said ship, her tackle,

apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath all and singular the matter aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the libellant as aforesaid, with costs, and the libellant may have such other and further relief as in law and justice he may be entitled to receive.

DAVID H. BURKE.
T. P. HAVEN, *Proctor.*

Sworn to and subscribed before me, March 30, '57.

JNO. A. MONROE,
U. S. Comm.

Endorsed: Filed March 30, 1857. John A. Monroe, clerk, by W. A. Chevers, deputy.

34 District Court of the United States for the northern district of California.

Libellant's stipulation for cost.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court, on the 30th day of March, in the year of our Lord one thousand eighteen hundred and fifty-seven, by D. H. Burke, against the ship "Star of Hope," for reasons and causes in the said libel mentioned, and the said D. H. Burke, and W. Adrain, and J. W. Embury, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said libellant or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be and each of them is bound in the sum of five hundred dollars, conditioned the libellant above named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal
35 by the Appellate Court.

DAVID H. BURKE,
WM. ADRAIN,
J. W. EMBURY.

Taken and acknowledged, this 30th day of March, 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA:

W. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. ADRAIN.
J. W. EMBURY.

Sworn to, this 30th day of March, 1857, before me.

JNO. A. MONROE.
U. S. Commissioner.

36 *Monition.*

NORTHERN DISTRICT OF CALIFORNIA, *ss*:

The President of the United States of America to the marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by David H. Burke, against the ship "Star of Hope," her tackle, &c., for breach of contract of affreightment, claiming $2,887\frac{50}{100}$ for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said ship or vessel, her tackle, &c., may for the causes in the said libel mentioned be condemned and sold to pay the demands of the libellants.

37 You are therefore hereby commanded to attach the said ship or vessel, her tackle, &c., &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say, why the same should not be comdemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern district of California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL] JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

38 J. P. HAVEN,
Proctor for Libellants.

In obedience to the within monition I attached the ship therein described on the 31st day of March, 1857, and have given due notice to all persons claiming the same that this court will on the 7th day of April next, (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 31, 1857.

JAS. Y. McDUFFIE,
U S. Marshal.
Per C. PALMER, *Deputy.*

MARCH 31, 1857.

Service admitted.

EUGENE CASSERLY,
For Claimant.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. A. Chever, deputy.

39 United States District Court for the northen district of California.—In Admiralty.

Libel.—(J. D. Wing.)

To the Honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of J. D. Wing, merchant, transacting business in the city of San Francisco, intervening for his claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Somerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows, to wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New-York, did receive on board certain valuable goods, wares, and merchandise belonging to these libellants, for the purpose and with the undertaking on the part of the owners and
40 master thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to this libellant.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did in fact sail from the said port of New York with the said goods, wares, and merchandise on board, on a voyage from the said last mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid. Whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo, the said master, alleging that he was without money, credit, or other means
41 to defray the expense of such repairs, sold a large and valuable portion of the goods, wares, and merchandise belonging to and shipped as aforesaid by this libellant, to wit, of the value of four hundred and ninety-six 50-100 dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That by reason of such sale, the said goods, wares, and merchandise became and were wholly lost to this libellant, to the damage of this libellant in the said sum of four hundred and ninety-six 50-100 dollars. Yet, the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum or any part thereof to this libellant.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of
42 this honorable court.

Wherefore, the libellant prays that process in due form of law, according to the course of this honorable court, in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear, and to answer upon oath all and singular the matters aforesaid; and that this honorable court would be pleased to decree the payment of the amount so due to the libellant, as aforesaid, with costs; and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

JNO. D. WING
J. P. HAVEN, *Proctor.*

Sworn to before me, this 30th March, 1857.
JNO. A. MONROE, *U. S. Com.*

Endorsed: Filed March 30th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

43 District Court of the United States for the northen district of California.

Libellant's stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by J. D. Wing, against the ship "Star of Hope," for reasons and causes in the said libel mentioned; and the said J. D. Wing, and W. Adrain and J. W. Embury, his sureties, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the said libellant or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit

of whom it may concern, that the undersigned shall be, and each of them is bound in the sum of five hundred dollars, conditioned the said libellant above-named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal by the Appellate Court.

JNO. D. WING.
WM. ADRAIN.
44 J. W. EMBURY.

Taken and acknowledged, this 30th day of March, 1857, before me.
JNO. A. MONROE,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss*:

W. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he, is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. ADRAIN.
J. W. EMBURY.

Sworn to, this 30th day of March, 1857, before me.
JNO. A. MONROE,
U. S. Commissioner.

45 *Monition.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

The President of the United States of America to the marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by J. D. Wing, against the ship "Star of Hope," her tackle, &c., claiming $496 50-100 for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made; and that all persons interested in the said ship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demand of the libellant:

You are, therefore, hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your cus-
46 tody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel; that the

be and appear before the said court, to be held in and for the northern district of California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.] JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*
J. P. HAVEN, *Proctor for Libellant.*

47 In obedience to the within monition, I attached the vessel therein described on the 31st day of March, and have given due notice to all persons claiming the same that this court will, on the 7th day of April inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 31, 1857.

JAS. Y. McDUFFIE,
U. S. Marshal.
P'r C. PALMER, *Deputy.*

MARCH 31, 1857.

Service admitted.

EUGENE CASSERLY,
For Claimant.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. H Chevers, deputy.

48 United States District Court for the northern district of California.—In admiralty.

Libel.—(Crosby & Dibblee.)

To the honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of C. W. Crosby and A. Dibblee, composing the firm of Crosby & Dibblee, merchants, transacting business in the city of San Francisco, intervening for their claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Somerby now is, or late was, master, her tackle, apparel, and furniture, and

also against all persons lawfully intervening for their interest therein in a cause of contract, civil and maritime, alleges as follows, to wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable goods, wares, and merchandise, belonging to these libellants, for the purpose and with the undertaking, on the part of the owners and
49 master thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to these libellants.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did in fact sail from the said port of New York, with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April, of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid; whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo, the said master, alleging that he was without the money, credit, or other means to defray the expense of such repairs, sold a large and valu-
50 able portion of the goods, wares, and merchandise, belonging to and shipped as aforesaid by these libellants, to wit, of the value of nine hundred and ninety-nine 50-100 dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That, by reason of such sale, the said goods, wares, and merchandise became and were wholly lost to these libellants, to the damage of these libellants in the said sum of nine hundred and ninety-nine 50-100 dollars. Yet the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum or any part thereof to these libellants.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of
51 law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath all and singular the matters aforesaid, and that this honorable court

would be pleased to decree the payment of the amounts so due to the libellants as aforesaid, with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

ALBERT DIBBLEE.

Sworn and subscribed to before me, this 30th March, 1857.

JNO. A. MONROE,
U. S. Commissioner.

J. P. HAVEN, *Proctor.*

Endorsed: Filed March 30, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

52 District Court of the United States for the northern district of California.

Libellants' stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven by A Dibblee, against the ship "Star of Hope," for reasons and cause, in the said libel mentioned, and the said A. Dibblee, and W. Adrain and J. W. Embury, his sureties, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the said libellant or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be and each of them is bound in the sum of five hundred dollars, conditioned the libels lants above named shall pay all costs and charges that may be awarded against them in any decree by this court, or, in case of appeal, by the Appellate Court.

ALBERT DIBBLEE.

53 WM. ADRAIN.
J. W. EMBURY.

Taken and acknowledged, this 30th day of March, 1857, before me.

W. H. CHEVERS,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

W. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. ADRAIN.
J. W. EMBURY.

Sworn to, this 30th day of March 1857, before me.

W. H. CHEVERS,
U. S. Commissioner.

54 *Monition.*

NORTHERN DISTRICT OF CALIFORNIA:

The President of the United States of America to the marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by Crosby and Dibblee, against the ship "Star of Hope," her tackle, apparel, and furniture, for breach of contract of affreightment, claiming the sum of $999 50-100, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants.

55 You are therefore hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern district of California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California,

56 this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.]

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*
J. P. HAVEN,
Proctor for Libellants.

In obedience to the within monition, I attached the ship therein described on the 31st day of March, and have given due notice to all persons claiming the same that this court will, on the 7th day of April next, (if that day should be a day of jurisdiction, if not on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be intervened for the same.

Dated March 31, 1857.

JAS. Y. McDUFFIE,
U. S. Marshal.
P'r C. PALMER, *Deputy.*

MARCH 31st, 1857.

Service admitted.

EUGENE CASSERLY,
For Claimant.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

57 United States District Court for the northern district of California.—In admiralty.

Libel.—(J. Patrick et al.)

To the honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of James Patrick and George W. Beaver, composing the firm of James Patrick & Co., merchants, transacting business in the city of San Francisco, intervening for their claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and with the admiralty and maritime jurisdiction of this court, whereof A. Somerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein in a cause of contract, civil and maritime, alleges as follows, to wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable goods, wares, and merchandise, belonging to these libellants, for the purpose and with the undertaking, on the part of the owners and mas-
58 ter thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to these libellants.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did in fact sail from the said port of New York with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April, of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upan a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid, whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo the said master, alleging that he was without the money, credit, or other means to defray the expenses of such repairs, sold a large and valuable
59 portion of the goods, wares, and merchandise belonging to and shipped as aforesaid by these libellants, to wit, of the value of sixteen thousand three hundred and twenty-six 77·100 dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That, by reason of such sale, the said goods, wares, and merchandise became and were wholly lost to these libellants, to the damage of the libellants in the said sum of sixteen thousand three hundred and twenty-six 77-100 dollars. Yet owners and master of the said ship, although thereby duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum or any part thereof to these libellants.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of
60 law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein, may be cited to appear and to answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the libellant as aforesaid with costs, and that the libellant may have such other and further relief as in law and justice they may be entitled to receive.

G. W. BEAVER.
J. P. HAVEN, *Proctor.*

Sworn to before me, this 30th March, 1857.
JNO. A. MONROE,
U. S. Comm'r.

Endorsed: Filed March 30, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

61 District Court of the United States for the northern district of California.

Libellant's stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by J. W. Patrick, against the ship "Star of Hope," for reasons and causes in the said libel mentioned; and the said J. W. Patrick, and W. Adrain and J. W. Embury, his sureties parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said libellant or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of

whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the libellant above-named shall pay all costs and charges that may be awarded against them in any decree by this court; or, in case of appeal, by the Appellate Court.

G. W. BEAVER.
W. ADRAIN.
62 J. W. EMBURY.

Taken and acknowledged, this 30th day of March, 1857, before me.
J'N A. MONROE,
U. S. Commis'r.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

W. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

WM. ADRAIN.
J. W. EMBURY.

Sworn to, this 30th day of March, 1857, before me.
JNO. A. MONROE,
U. S. Comm'r.

63 *Monition.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

The President of the United States of America, to the marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by James Patrick & Co., against the ship "Star of Hope," her tackle, apparel, and furniture, for breach of contract of affreightment, claiming $16,326 77-100, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises; and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are, therefore, hereby commanded to attach the ship or
64 vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern district of

California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegation in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.]

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

65 J. P. HAVEN,
Proctor for Libellant.

In obedience to the within monition, I attached the ship therein described, on the 31st day of March, 1857, and have given due notice to all persons claiming the same that this court will, on the 7th day of April next (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 31, 1857.

JAS. Y. McDUFFIE,
U. S. Marshal.
P'r C. PALMER, *Deputy.*

MARCH 31, 1857.

Service admitted.

EUGENE CASSERLY,
For Claimant.

Endorsed: Filed April 7, 1867. Jno. A. Monroe, clerk, by W. H. Chevers, deputy.

66 United States District Court for the northern district of California.—In Admiralty.

Libels.—(Jones and Stevens.)

To the honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of C. C. Jones and C. Stevens, composing the firm of Jones & Stevens, merchants, transacting business in the city of San Francisco, intervening for their claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Somerby now is, and late was, master, her tackle, apparel, and furniture; and also against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, allege as follows, to wit:

First. That the said ship, some time in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable goods, wares, and merchandise, belonging to these libellants, for the purpose and with the undertaking, on the part of the owners and master
67 thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to these libellants.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did, in fact, sail from the said port of New York, with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April, of the same year, the said ship, in entering, or attempting to enter, the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair, in order to continue and complete the voyage aforesaid; whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo, the said master, alleging that he was without the money, credit, or other means
68 to defray the expense of such repairs, sold a large and valuable portion of the goods, wares, and merchandise belonging to, and shipped as aforesaid by, these libellants, to wit, of the value of one thousand one hundred and twenty-one 95-100 dollars.

Fifth. That the necessary repairs having been thus made, the sad ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That by reason of such sale, the said goods, wares, and merchandise became and were wholly lost to the libellants, to the damage of these libellants in the said sum of one thousand one hundred and twenty-one 95-100 dollars. Yet the owners and master of the said ship, although thereto requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum, or any part thereof, to these libellants.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

69 Wherefore the libellants pray that process in due form of law, according to the course of this honorable court, in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found; and that all persons claiming any right, title, or interest therein, may be cited to appear and to answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the

libellants as aforesaid, with costs; and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

CHARLES C. JONES.
J. P. HAVEN, *Proctor.*

Sworn to before me, this 30th March, A. D. 1857.
JNO. A. MONROE,
U. S. Commissioner.

Endorsed: Filed March 30, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

70 District Court of the United States for the northern district of California.

Libellants' stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by C. C. Jones, against the ship "Star of Hope," for reasons and causes in the said libel mentioned, and the said C. C. Jones, and W. Adrain and J. W. Embury, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said libellant or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the libellants above named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal by the Appellate Court.

CHARLES C. JONES.
WM. ADRAIN.
71 J. W. EMBURY.

Taken and acknowledged, this 30th day of March, 1857, before me:

JNO. A. MONROE,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss*:

W. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. ADRAIN.
J. W. EMBURY.

Sworn to, this 30th day of March, 1857, before me.
JNO. A. MONROE,
U. S. Commissioner.

72 *Monition.*

NORTHERN DISTRICT OF CALIFORNIA, *ss*:

The President of the United States of America to the Marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by Jones and Stevens, against the ship "Star of Hope," her tackle, apparel, and furniture, for breach of contract of affreightment, claiming $1,121 95-100, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said ship
73 or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern district of California, on the 7th day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.] JOHN A. MONROE, *Clerk.*

By W. H. CHEVERS, *Deputy.*

74 J. P. HAVEN,

Proctor for Libellant.

In obedience to the within monition, I attached the ship therein described, on the 31st day of March, 1857, and have given due notice to all persons claiming the same, that this court will, on the 7th day of April next, (if that day should be a day of jurisdiction, if not on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 31, 1857.

JAS. Y. McDUFFIE, *U. S. Mars'al.*

By E. O. F. HASTINGS, *Deputy.*

MARCH 31, 1857.

Service admitted.

EUGENE CASSERLY, *for Claimant.*

Endorsed: Filed April 7, 1857. Jno. A. Monroe, clerk, by W. H. Chevers, deputy.

75 United States District Court for the northern district of California.—In admiralty.

Libel.—(B. R. Nesbitt.)

To the honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of Benj. J. Nesbitt, merchant, transacting business in the city of San Francisco, intervening for his claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Somerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein in a cause of contract, civil and maritime, alleges as follows, to wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable goods, wares, and merchandise, belonging to this libellant, for the purpose and with the undertaking, on the part of the owners and master thereof, to transport the same to the port of San Francisco, in
76 the State of California, and there deliver the said goods, wares, and merchandise to this libellant.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did in fact sail from the said port of New York with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April, of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid; whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo, the said master, alleging that he was without the money, credit, or other means to defray the expenses of such repairs, sold a large and valuable portion of the goods, wares, and merchandise belonging to and shipped
77 as aforesaid by this libellant, to wit, of the value of two hundred and sixty dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh

day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That by reason of such sale the said goods, wares, and merchandise became and were wholly lost to this libellant, to the damage of this libellant in the said sum of two hundred and sixty dollars. Yet the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum, or any part thereof, to this libellant.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court; wherefore the libellant prays that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the libellant as aforesaid, with costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

78

W. T. SHERMAN, *Att'y.*
J. P. HAVEN, *Proctor.*

Sworn to before me this 30th day of March, 1857.

JNO. A. MONROE,
U. S. Comm'r.

Endorsed: Filed March 30th, 1857. John A. Monroe, clerk, by W. A. Chevers, deputy.

79 District Court of the United States for the northern district of California.

Libellant's stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by B. R. Nesbitt, against the ship "Star of Hope," for reasons and causes in the said libel mentioned, and the said B. R. Nesbitt, and W. Adrian and J. W. Embury, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said libellant or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the libellant above named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal by the Appellate Court.

80

W. T. SHERMAN, *Att'y.*
WM. ADRAIN.
J. W. EMBURY.

Taken and acknowledged, this 30th day of March, 1857, before me,
JNO. A. MONROE,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Wm. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. ADRAIN.
J. W. EMBURY.

Sworn to, this 30th day of March, 1857, before me,
JNO. A. MONROE,
U. S. Commissioner.

81 *Monition.*

The President of the United States of America to the marshal of the northern district of California, greeting:

NOTHERN DISTRICT OF CALIFORNIA:

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by Ben. F. Nesbitt against the ship "Star of Hope," her tackle, apparel, and furniture, for breach of contract of affreightment, claiming $260 for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said ship or vessel, her tackle, &c., may for the causes in the said libel mentioned be condemned and sold to pay the demand of the libellant.

82 You are, therefore, hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court to be held in and for the northern district of California, on the 7th day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf.

And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at

the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.] JOHN A. MONROE, *Clerk.*

83 By W. H. CHEVERS, *Deputy.*

J. P. HAVEN,
Proctor for Libellant.

In obedience to the within monition, I attached the ship therein described on the 31st day of March, 1857, and have given due notice to all persons claiming the same, that this court will, on the 7th day of April inst., (if that day should be a day of jurisdiction, if not on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 31st, 1857.

JAS. Y. McDUFFIE,
U. S. Marshal.
By E. O. F. HASTINGS,
Deputy.

MARCH 31*st*, 1857.

Service admitted.

EUGENE CASSERLY.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

84 United States District Court for the northern district of California.—In admiralty.

Libel.—(Moore and Folger.)

To the honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of B. F. Hodgson, G. A. Moore, and F. B. Folger, composing the firm of Moore & Folger, merchants, transacting business in the city of San Francisco, intervening for their claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco and within the admiralty and maritime jurisdiction of this court, whereof A. Sowerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein in a cause of contract, civil and maritime, alleges as follows, to wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable

85 goods, wares, and merchandise belonging to these libellants, for the purposes and with the undertaking, on the part of the owners and master thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to the libellants.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did in fact sail from the said port of New York with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid; whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo, the said ship-
master alleging that he was without the money, credit, or other
86 means to defray the expense of such repairs, sold a large and valuable portion of the goods, wares, and merchandise belonging to and shipped as aforesaid by these libellants, to wit, of the value of five hundred and ten dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That by reason of such sale, the said goods, wares, and merchandise became and were wholly lost to these libellants, to the damage of these libellants in the said sum of five hundred and ten dollars. Yet the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum or any part thereof to these libellants.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore the libellants pray that proof ind ue form of law,
87 according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the libellants as aforesaid with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

G. H. MOORE.

Sworn to, and subscribed March 30th, 1857, before me.

W. H. CHEVERS,
Deputy Clerk.

J. P. HAVEN, *Proctor.*

Endorsed: Filed March 30th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

88 District Court of the United States for the northern district of California

Libellant's stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by G. H. Moore *et al.* against the ship "Star of Hope," for reasons and causes in the said libel mentioned, and the said G. H. Moore, and W. Adrain and J. W. Embury, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said libellant or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars. Now, therefore, it is hereby stipulated and agreed that, for the benefit of whom it may concern, that the undersigned shall be and each of them is bound in the sum of five hundred dollars, conditioned the libellants above named shall pay all costs and charges that may be awarded against them in any decree by this court or in case of appeal by the Appellate Court.

G. H. MOORE,
WM. ADRAIN.
89 J. W. EMBURY.

Taken and acknowledged, this 30th day of March, 1857, before me.
W. H. CHEVERS,
U. S. Comm'r.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

W. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. ADRAIN.
J. W. EMBURY.

Sworn to, this 30th day of March, 1857, before me.
W. H. CHEVERS,
U. S. Comm'r.

90 *Moniton.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

The President of the United States of America, to the marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by Moore and Folger against the ship Star of Hope, her tackle, apparel, and furniture, for breach of contract of affreightment, claiming $510 for the reasons and causes in the said

libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants.

You are therefore hereby commanded to attach the said
91 ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of said libel, that they be and appear before the said court to be held in and for the northern district of California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.]

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*
J. P. HAVEN,
Proctor for Libellant.

92 In obedience to the within monition, I attached the ship therein described on the 31st day of March, and have given due notice to all persons claiming the same, that this court will, on tbe 7th day of April inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 31, 1857.

JAS. Y. McDUFFEE,
U. S. Marshal.
Per C. PALMER, *Deputy.*

MARCH 31, 1857.

Service admitted.

EUGENE CASSERLY.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

93 United States district court for the northern district of California.—In admirality.

Libel.—(*Bond & Hall.*)

To the honorable Ogden Hoffman, judge of the district court of the United States for the northern district of California:

The libel of James B. Bond and H. M. Hall, composing the firm of Bond & Hall, merchants, transacting business in the city of San Francisco, intervening for their claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Somerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein in a cause of contract, civil, and maritime, alleged as follows, to wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable goods, wares, and merchandise, belonging to these libellants for the purpose and with the undertaking, on the part of the owners and master
94 thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to these libellants.

Second. That afterwards, to wit, on the fourth day of February, one thousand eight hundred and fifty-six, the said ship did in fact sail from the said port of New York, with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April, of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidently grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid. Whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo, the said master, alleging that he was without the money, credit, or other means to defray the expense of such repairs, sold a large and valu-
95 able portion of the goods, wares, and merchandise belonging to, and shipped as aforesaid by, these libellants, to wit, of the value of five hundred and eleven 95-100 dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That by reason of such sale, the said goods, wares, and merchandise became and were wholly lost to these libellants, to the

damage of these libellants in the said sum of five hundred and eleven 65-100 dollars; yet the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum, or any part thereof, to these libellants.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cause of ad-
96 miralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath, all and singular, the matters aforesaid; and that this honorable court would be pleased to decree the payment of the amount so due to the libellants as aforesaid with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

HENRY M. HALL.
J. P. HAVEN, *Proctor.*

Sworn to before me, this 30th March, 1857.
JNO. A. MONROE,
U. S. Comm'r.

Endorsed: Filed March 30, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

97 District Court of the United States for the northern district of California.

Libellants' stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by H. M. Hall, against the ship "Star of Hope," for reasons and causes in the said libel mentioned, and the said H. M. Hall, and W. Adrain and J. W. Embury, his sureties, parties, hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the said libellant or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the libellants above named shall pay all costs and damages that may be

awarded against them in any decree by this court, or in case of appeal by the Appellate Court.

HENRY M. HALL.
WM. ADRAIN.
J. W. EMBURY.

98 Taken and acknowledged, this 30th day of March, 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Wm. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. ADRIAN.
J. W. EMBURY.

Sworn to this 30th day of March, 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

99 *Monition.*

The President of the United States of America, to the marshal of the northern district of California, greeting:

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by Bond and Hall, against the ship "Star of Hope," her tackle, apparel, and furniture, for breach of contract of affreightment claiming $511 5-100 for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel her tackle, &c., may, for the cause in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are, therefore, hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody
100 until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say, why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern dis-

trict of California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.]

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*
J. P. HAVEN,
Proctor for Libellant.

101 In obedience to the within monition, I attached the ship therein described on the 31st day of March, and have given due notice to all persons claiming the same, that this court will on the 7th day of April next, (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 31, 1857.

JAS. Y. McDUFFIE,
U. S. Marshal.
Per C. PALMER, *Deputy.*

MARCH 31, 1857.

Service admitted.

EUGENE CASSERLY,
For claimant.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

102 United States District Court for the northern district of California.—In admiralty.

Libel.—(*Park & White.*)

To the honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of Park and White, composing the firm of Park and White, merchants, transacting business in the city of San Francisco, intervening for their claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Somerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully interven-

ing for their interest therein in a cause of contract, civil and maritime, alleges as follows, to wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable goods, wares, and merchandise belonging to these libellants, for the purpose and with the undertaking, on the part of the owners and master
103 thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to these libellants.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did in fact sail from the said port of New York, with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April, of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid; whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo the said master, alleging that he was without the money, credit, or other means
104 to defray the expense of such repairs, sold a large and valuable portion of the goods, wares, and merchandise belonging to and shipped as aforesaid by these libellants, to wit, of the value of three hundred and fifty-two dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That by reason of such sale the said goods, wares, and merchandise became and were wholly lost to these libellants, to the damage of these libellants in the said sum of three hundred and fifty-two dollars. Yet the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum, or any part thereof, to the libellant.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

105 Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the libellants

as aforesaid with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

THOS. A. WHITE.
J. P. HAVEN, *Proctor.*

Sworn and subscribed before me, this 30 March, A. D. 1857.
JNO. A. MONROE,
U. S. Comm'r.

Endorsed: Filed March 30, 1857. Jno. A. Monroe clerk, by W. H. Chevers, deputy.

106 District Court of the United States for the northern district of California.

Libellant's stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by Park & White, against the ship "Star of Hope" for reasons and causes in the said libel mentioned, and the said Thomas A. White, and W. Adrain, and J. W. Embury, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said libellants or his sureties execution may issue against their goods, chattels, and lands for the sum of five hundred dollars.

Now therefore it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be and each of them is bound in the sum of five hundred dollars, conditioned the libellants above named shall pay all costs and charges that may awarded against them in any decree by this court, or in case of appeal by the Appellate Court.

THOS. A. WHITE.
WM. ADRAIN.
J. W. EMBURY.

107 Taken and acknowledged, this 30th day of March, 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA:

W. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. ADRAIN.
J. W. EMBURY.

Sworn to, this 30th day of March, 1857, before me.
JNO. A. MONROE,
U. S. Commissioner.

108 *Monition.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

The President of the United States of America to the marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by Park and White, against the ship "Star of Hope," her tackle, apparel, and furniture, for breach of contract of affreightment, claiming $352 for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demand of the libellants.

You are therefore hereby commanded to attach the said ship
109 or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court to be held in and for the northern district of California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf; and what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL] JOHN A. MONROE, *Clerk.*
By W. A. CHEVERS, *Deputy.*

110 J. P. HAVEN,
Proctor for Libellants.

In obedience to the within monition, I attached the ship therein described on the 31st day of March, and have given due notice to all persons claiming the same that this court will on the 7th day of April, inst., (if that day should be a day of jurisdiction, if not on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 31, 1857.

JAS. Y. McDUFFIE,
U. S. Marshal.
Per C. PALMER, *Deputy.*

MARCH 31, 1857.

Service admitted.

EUGENE CASSERLY,
For Claimant.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

111 United States District Court for the northern district of California.—In Admiralty.

Libel.—(Pommares & Co.)

To the honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of J. M. Pammares and L. G. Banguire, composing the firm of J. M. Pammares & Co., merchants, transacting business in the city of San Francisco, intervening for their claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Sowerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maratime, alleges as follows, to wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable goods, wares,
and merchandise, belonging to these libellants, for the pur-
112 pose and with the undertaking, on the part of the owners and master thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to these libellants.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did, in fact, sail from the said port of New York, with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April, in the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair, in order to continue and complete the voyage aforesaid; whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo, the said master,
alleging that he was without the money, credit, or other
113 means to defray the expense of such repairs, sold a large and valuable portion of the goods, wares, and merchandise belonging to and shipped as aforesaid by these libellants, to wit, of the value of three hundred and twenty-six 25-100 dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-seven, arrived at the port of San Francisco aforesaid.

Sixth. That by reason of said sale, the said goods, wares, and merchandise became and were wholly lost to these libellants, to the damage of these libellants in the said sum of three hundred and twenty-six 25-100 dollars. Yet the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum, or any part thereof, to these libellants.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

114 Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein, may be cited to appear and to answer, upon oath, all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the libellants as aforesaid, with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

L. G. BRUGUIERRE.
J. P. HAVEN, *Proctor.*

Sworn to, and subscribed before me March 30, 1857.

W. H. CHEVER,
Deputy Clerk.

Endorsed: Filed March 30, 1857. John A. Monroe, clerk, by W. H. Chever, deputy.

115 District Court of the United States, for the northern district of California.

Libellants' stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by J. M. Pommares & Co., against the ship "Star of Hope," for reasons and causes in the said libel mentioned, and the said L. G. Bruguiere, and W. Adrain and J. W. Embury, his sureties, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the said libellants, or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit

of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the libellant above named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal by the Appellate Court.

L. G. BRUGUIERE.
W. ADRAIN.
116 J. W. EMBURY.

Taken and acknowledged, this 30th day of March, 1857, before me.
W. H. CHEVERS,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

W. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. ADRAIN.
J. W. EMBURY.

Sworn to, this 30th day of March, 1857, before me.
W. H. CHEVERS,
U. S. Commissioner.

117 *Monition.*

NORTERN DISTRICT OF CALIFORNIA, *ss:*

The President of the United States of America to the marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by J. M. Pommares & Co., against the ship "Star of Hope," her tackle, apparel, and furniture, for breach of contract of affreightment, claiming $326 25-100, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are, therefore, hereby commanded to attach the said
118 ship or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern

district of California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.] JOHN A. MONROE, *Clerk.*
By W. A. CHEVERS, *Deputy.*

119 J. P. HAVEN,
Proctor for Libellant.

In obedience to the within monition, I attached the ship therein described on the 31st day of March, 1857, and have given due notice to all persons claiming the same that this court will, on the 7th day of April next (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter) proceed to the trial and condemnation therof, should no claim be interposed for the same.

Dated March 31st, 1857. JAS. Y. McDUFFIE,
U. S. Marshal.
By E. O. T. HASTINGS,
Deputy.

MARCH 31ST, 1857.

Service admitted.

EUGENE CASSERLY,
For Claimant.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

120 United States District Court for the northern district of California.—In admiralty.

Libel.—(Jesse Sawyer.)

To the honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of Jesse Sawyer, U. S. naval storekeeper, intervening for his claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Sowerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows, to wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying in the

port of New York, did receive on board certain valuable goods, wares, and merchandise belonging to this libellant, for the purpose and with the undertaking, on the part of the owners and master thereof, to transport the same to the port of San Francisco, in
121 the State of California, and there deliver the said goods, wares, and merchandise, to this libellant.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did in fact sail from the said port of New York with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid, whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo, the said master, alleging that he was without the money, credit, or other means to defray the expense of such repairs, sold a large and valuable portion of the goods, wares, and merchandise belonging to and
122 shipped as aforesaid by this libellant, to wit, of the value of thirty-one thousand eight hundred and ninety-four 74-100 dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That by reason of such sale, the said goods, wares, and merchandise became and were wholly lost to this libellant, to the damage of this libellant in the said sum of thirty-one thousand eight hundred and ninety-four 74-100 dollars. Yet the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum or any part thereof to this libellant.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore the libellant prays that process, in due form of law, according to the course of this honorable court in causes of ad-
123 miralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath, all and singular, the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the libellant as aforesaid, with costs, and that the libellant may

MARCH 31, 1857.

Service admitted.

EUGENE CASSERLY,
For Claimant.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

129 United States District Court for the northern district of California.—In admiralty.

Libel.—Hallock & Co.

To the honorable Ogden Hoffman, judge of the District Court of the United States for the northern district of California:

The libel of J. Y. Hallock, composing the firm of J. Y. Hallock & Co., merchants, transacting business, in the city of San Francisco, intervening for their claim and interest against the ship "Star of Hope," of the port of Newburyport, now lying in the port of San Francisco, and within the admiralty and maritime jurisdiction of this court, whereof A. Sowerby now is, or late was, master, her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows, to wit:

First. That the said ship, sometime in the months of January and February, one thousand eight hundred and fifty-six, then lying in the port of New York, did receive on board certain valuable goods,
wares, and merchandise belonging to these libellants, for the
130 purpose and with the undertaking, on the part of the owners and master thereof, to transport the same to the port of San Francisco, in the State of California, and there deliver the said goods, wares, and merchandise to these libellants.

Second. That afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-six, the said ship did in fact sail from the said port of New York with the said goods, wares, and merchandise on board, on a voyage from the said last-mentioned port to the port of San Francisco aforesaid.

Third. That during the said voyage, to wit, on or about the eighteenth day of April of the same year, the said ship, in entering or attempting to enter the port of San Antonio, accidentally grounded or stranded upon a bank or shoal, whereby she became so greatly injured and damaged as to render it necessary to repair in order to continue and complete the voyage aforesaid, whereupon the said master put the said ship into the port of Montevideo for such repairs.

Fourth. That while in the said port of Montevideo the said master,
alleging that he was without the money, credit, or other means
131 to defray the expense of such repairs, sold a large and valuable portion of the goods, wares, and merchandise belonging to and shipped as aforesaid by these libellants, to wit, of the value of two thousand three hundred and thirty-eight dollars.

Fifth. That the necessary repairs having been thus made, the said ship continued on the voyage aforesaid, and on or about the seventh day of December, one thousand eight hundred and fifty-six, arrived at the port of San Francisco aforesaid.

Sixth. That by reason of such sale the said goods, wares, and merchandise became and were wholly lost to these libellants, to the damage of these libellants in the said sum of two thousand three hundred and thirty-eight dollars. Yet the owners and master of the said ship, although thereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum or any part thereof to these libellants.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of
132 law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the libellants, as aforesaid, with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

JOHN Y. HALLOCK.
J. P. HAVEN, *Proctor.*

Sworn and subscribed to before me this 30th March. 1857.
JNO. A. MONROE,
U. S. Comm'r.

Endorsed: Filed March 30, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

133 District Court of the United States for the northern district of California.

Libellant's stipulation for costs.—Filed the 30th day of March, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-six, by J. Y. Hallock against the ship "Star of Hope," for reasons and causes in the said libel mentioned, and the said J. Y. Hallock, and W. Adrain and J. W. Embury, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said libellants, or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of

them is, bound in the sum of five hundred dollars, conditioned the libellants above-named shall pay all costs and charges that may be awarded against them in any decree by this counsel, or in case of appeal, by the Appellate Court.

JOHN Y. HALLOCK.
W. ADRAIN.
134 J. W. EMBURY.

Taken and acknowledged this 30th day of March, 1857, before me.
JNO. A. MONROE,
U. S. Comm'r.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

W. Adrain and J. W. Embury, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. ADRAIN.
J. W. EMBURY.

Sworn to this 30th day of March, 1857, before me,
JNO. A. MONROE,
U. S. Commissioner.

135 *Monition.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

The President of the United States of America to the marshal of the northern district of California, greeting:

Whereas a libel of intervention hath been filed in the District Court of the United States for the northern district of California, on the 30th day of March, in the year of our Lord one thousand eight hundred and fifty-seven, by J. Y. Hallock & Co., against the ship "Star of Hope," her tackle, &c., claiming $2,338, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants.

You are, therefore, hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your cus-
136 tody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern district of California, on the seventh day of April next, at eleven o'clock in the forenoon of the same day, if the same day shall be a

day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California, this 31st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.]

JOHN A. MONROE, *Clerk.*
By W. A. CHEVERS, *Deputy.*
J. P. HAVEN,
Proctor for Libellants.

137 In obedience to the within monition, I attached the ship therein described on the 31st day of March, 1857, and have given due notice to all persons claiming the same, that this court will, on the 7th day of April next, (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 31, 1857.

JAS. Y. McDUFFIE,
U. S. Marshal.
P'r E. O. F. HASTINGS,
Deputy.

MARCH 31, 1857.

Service admitted.

EUGENE CASSERLY,
For Claimant.

Endorsed: Filed April 7, 1857. John A. Monroe, clerk, by W. A. Chevers, deputy.

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139 In the United States district court for the northern district of California.—In admiralty.

1. WILLIAM C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE."

2. JESSE SAWYER
vs.
SAME.

3. BENJ. F. NESBITT
vs.
SAME.

4. ADRAIN & STORY
vs.
SAME.

5. MOORE & FOLGER
vs.
SAME.

6. J. D. WING
vs.
SAME.

7. PARK & WHITE
vs.
SAME.

8. J. M. POMMARES *et al.*
vs.
SAME.

9. BOND & HALE
vs.
SAME.

10. CROSBY & DIBBLEE
vs.
SAME.

11. JONES & STEVENS
vs.
SAME.

12. D. R. PROVOST
vs.
SAME.

13. J. Y. HALLOCK *et al.*
vs.
SAME.

14. DAVID H. BURKE
vs.
SAME.

15. JAS. PATRICK *et al.*
vs.
SAME.

Affidavit of Geo. A. Kellogg.

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

George H. Kellogg, having been sworn, says: That he is a member of the mercantile firm of Flint, Peabody & Co., of San Francisco, who are the agents of the owners of the above-named ship, "The Star of Hope," Messrs. Coffin and Titcomb, of Massachusetts.

140 That on the 21st March ulto., a suit (which is that above numbered, No. 1) was commenced in this court, by William C. Annan *et al.*, libellants, against the said ship, in which suit a warrant was issued and the ship duly arrested by the United States marshal, and is ever since in his custody. That in their libel in said suit, the libellants demand against the ship the sum of forty-four thousand seven hundred dollars ($44,700) for the alleged value of certain goods, wares, and merchandise alleged to have been shipped upon the said ship by the libellants, to be delivered at the said port of San Francisco, and further alleged to have been lost to the libellants by reason of certain actings and doings of the master of said ship and otherwise as in said libel averred.

That on March 31st ulto., all the several above-entitled actions, numbered 2 to 15, both inclusive, were commenced against the said ship by the parties named as libellants in each respectively, and in each process was duly issued as deponent is informed and believed, by virtue of which the ship was arrested by the United States marshal, and is ever since in his custody. That each of the said libels purports to be a libel of intervention, but that in the facts alleged as to the cause of action, the subject-matter of the suit, the nature
141 of the relief demanded, and in a word, in all respects except the names of the libellants and the amount of money alleged as damages, each one of the said libels is identical with the libel in the suit of William C. Annan *et al.* and with each other.

That as deponent is informed and believes, the facts of the defence in all of these actions are precisely the same every particular, and are mainly, that the loss alleged in all and each of the said libels was a loss incurred under such circumstances as to constitute a case of general average and contribution by the cargo, and the owners thereof, the said libellants as well as the ship in their just proportions.

That all of the above fifteen actions were commenced, as deponent is informed and believes, by the same proctor, Joshua P. Haven, esq., though in one of them, namely, that of Annan *et al*, C. Temple Emmet, esq., has, since the commencement thereof, been substituted as proctor.

That the actual value of the said ship, her furniture, tackle, and apparel, including her contracts and engagements, is, according to the best judgment and estimate which deponent can form,
142 after examination and enquiry, not over thirty-five thousand dollars, ($35,000,) while she cannot bring at marshal's sale, over thirty thousand dollars, ($30,000,) and the amount sued for in the first libel, of Annan *et al*, is forty-four thousand seven hundred ($44,700) dollars.

GEO. H. KELLOGG.

Subscribed and sworn to this 8th day of April, 1857, before me.
W. H. CHEVERS,
Deputy Clerk.

Upon the affidavit of Geo. H. Kellogg in these cases, and the pleadings and papers on file, let the libellants show cause on Friday next, at 11 o'clock a. m., why the said suits should not be consolidated, or such other order made as may be proper in the premises.

San Francisco, April 8, 1857.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed April 14th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

143 In the United States District Court for the northern district of California.—In admiralty.

Order.

1. WILLIAM C. ANNAN *et al*
vs.
SHIP "STAR OF HOPE."

2. JESSE SAWYER
vs
SAME.

3. BENJ. F. NESBITT
vs.
SAME.

4. ADRAIN & STORY
vs.
SAME.

5. MORE & FOLGER
vs.
SAME.

6. J. D. WING
vs.
SAME.

7. PARK & WHITE
vs.
SAME.

8. J. M. POMMARES *et al*
vs.
SAME.

9. BOND & HALL
vs.
SAME.

10. CROSBY & DIBBLEE
vs.
SAME.

11. JONES & STEVENS
vs.
SAME.

12. D. R. PROVOST
vs.
SAME.

13. J. Y. HALLOCK *et al*
vs.
SAME.

14. DAVID H. BURKE
vs.
SAME.

15. JAS. PATRICK *et al*
vs.
SAME.

On reading and filing the affidavit of George H. Kellogg, on which an order to show cause was heretofore granted in all the above-entitled causes and after hearing, Joshua P. Haven and C. Temple Emmet, esquires, for the libellants, and Eugene Casserly for the respondents, upon the argument of the motion upon said order.

144 It is ordered that the respondent have leave to file one general answer to the libels in all the above-entitled causes, and also one general stipulation therein for costs and expenses in the sum of one thousand dollars, conditioned that the said respondent shall pay all costs and expenses that may be awarded against him in each and every of the said suits.

All other questions upon said order and motion being, for the present, reserved.

Dated San Francisco, April 14, 1857.

OGDEN HOFFMAN,
U. S. District Judge.

Endorsed: Filed April 14, 1857. John C. Monroe, clerk, by W. H. Chevers, deputy.

145 In the United States District Court for the northern district of California.—In admirality.

Claim and Answer.

To the honorable Ogden Hoffman, judge of the district court of the United States for the northern district of California:

And now comes Henry Pearsons, the master of the ship "Star of Hope," and for claim and answer to the libel of William C. Annan, William H. Tallmadge, and James W. Embury, and also to the several libels of intervention of Jesse Sawyer, U. S. naval storekeeper; Benjamin F. Nesbitt, William Adrian, and William F. Story; B. F.

Hodgson, G. H. Moore, and F. B. Folger; J. D. Wing; — Park; and White; J. M. Pommares and L. G. Brugiere; James B. Bond and Henry M. Hall; C. W. Crosby and A. Dibblee; C. C. Jones and C. Stevens; D. R. Provost; J. Y. Hallock; David H. Burke; James Patrick, and George W. Beaver, herein filed against the said ship, Star of Hope, her tackle, apparel, and furniture, alleges and propounds, as follows:

First. That Charles H. Coffin and B. B. Titcomb, both of the State of Massachusetts, and each of whom is now and ever has been a non-resident of, and absent from, this State, are the true
146 and bona fide owners of said ship, and that no other person is the owner thereof; and he, the said respondent, is the master thereof, duly appointed by [by] them at New York, on or about February 20th, 1857, in lieu of A. Somerby, her former master, who was then, and for some time previous had been, in the said State of Massachusetts; and he claimed said ship as the master and lawful bailee thereof.

Second. That, as to the matter in article first, in each of said several libels propounded and alleged, he admits that the said ship did receive on board, at the time and place alleged, certain goods, wares, and merchandise, for the purpose and with the undertaking, on the part of the owners and master, to transport the same to the port of San Francisco, in said State, and there deliver the same to the said libellants, in the said several libels respectively; but what goods, wares, and merchandise these were, of what description, and whether the same were of any value or not, or whether or not they belonged to the said several libellants respectively, this respondent knows not and has no information or belief respecting the same, and therefore denies each and every of the allegations in that behalf in said articles first alleged.

147 Third. That, as this respondent is informed and believes, on or about November 20th, 1855, at the city of New York, the said Coffin and Titcomb, the owners of the said ship, did demand and let to the said libellants, William C. Annan, William H. Tallmadge, and James W. Embury, and at their instance and request the burden of the said ship, for the said voyage, from New York to San Francisco, by a certain written contract or charter-party of affreightment, by which, among other things, the said libellants undertook and promised to pay the said Coffin and Titcomb, as the price and hire of the burden of said ship the sum of thirty-six thousand dollars, ($36,000,) freight, which said charter-party was then and there duly executed by the said libellants, William C. Annan, William H. Tallmadge, and James W. Embury, on the one part, by the name of Annan Tallmadge & Co., and by the said Charles H. Coffin for himself and his co-owner, B. B. Titcomb, on the other. And in pursuance of the said charter-party, all of the said goods, wares, and merchandise, which were in fact received on board of said ship, were received and not otherwise; and the same were either laden on board the said ship at New York, by the said libellants, Annan, Tallmadge,
148 and Embury, as the charterers of the burthen thereof, or were

there received by them on board said ship, upon hire and freight to be paid to them, the said libellants, Annan, Tallmadge, and Embury, from divers persons, the owners or shippers thereof, to be delivered in San Francisco aforesaid.

Fourth. That respondent has heard and believes it to be true, as alleged in article second of each of said several libels respectively, that said ship sailed from the port of New York on or about the tenth day of February, 1856, on a voyage to the said port of San Francisco, having on board certain goods, wares, and merchandise to be delivered to the said libellants; but this respondent further alleges, as he is informed and believes, said ship did so sail under and in pursuance of said contract or charter-party, and not otherwise, having on board a general cargo, including six hundred tons of coal or thereabouts, five hundred casks and packages, or thereabouts, of brandy and other spirituous liquors, and one barrel and forty-eight kegs of certain preparations of gunpowder for blasting purposes, known as patent safety fusees.

Fifth. That, as to the matter alleged and propounded in articles third and fourth of each of said several libels respectively, the
149 same are, in great part, untruly pleaded and alleged, as this respondent is informed and believes, for the truth and fact were and are, as he is informed and believes, and he therefore alleges and propounds as follows:

That during the voyage of said ship from New York to San Francisco, as aforesaid, on or about the fourteenth day of April, 1856, at eight o'clock in the morning, the said ship being then about latitude forty-six (46°) degrees south, about longitude 53° west, the weather squally and the sea rough, great quantities of smoke and steam were found issuing from the fore and after hatches. These having been removed, an examination of the ship was attempted, but the smoke and steam between decks were so thick and suffocating that it could not be made, and the captain thereupon had the hatches fastened down and every opening tightened up, in the hope to check the progress of the fire and, if possible, to extinguish the same. That the fire was supposed by all on board to have originated in the coal by spontaneous combustion or otherwise, and in consequence of the highly combustible and explosive character of a portion of the cargo, consisting as aforesaid of a large quantity of spirituous liquors and preparations of gunpowder, very great alarm was felt by all, and the destruction of the ship, cargo, and every soul on board was at
150 once apprehended. The crew were unwilling to continue the voyage, and, upon consultation with the officers, the captain determined to make for the nearest harbor, which he discovered to be, as laid down on his chart, the bay of San Antonio, upon the southeastern coast of Patagonia. The course of the ship was changed accordingly, and in about four days, during which the indications of fire continued, she arrived on the eighteenth day of April, about noon, off the said harbor or bay, and made the usual signal for the pilot. The anchors were made ready, and in hauling up the chains they were found to be so hot that the coal-tar with which they were

coated had melted and run off, which fact very greatly increased the alarm. After waiting nearly three hours for a pilot none came off, and there appeared no sign of human life or habitation. Meantime the weather outside was squally, with much sea running. In consequence of the condition of the ship, the captain then resolved, for the general safety and especially for the preservation of the cargo and of the lives of those on board, to make the attempt to run in without a pilot, at the risk of stranding the ship, in preference to remaining outside in the momentary apprehension of destruction to all. In attempting to run in the ship struck, and though almost immediately she floated off, yet shortly afterwards she grounded
151 again, and the weather being rough, with much wind and sea, she commenced and continued pounding and labouring heavily, so that all on board expected every moment she would go to pieces. So imminent was the danger regarded that finally all took to the boats for the shore, partly for assistance and partly for safety, but found a wild and desolate country, with not a human being or habitation. During April nineteenth the ship was revisited and was found to be leaking considerably. Upon examination there were no further signs of fire, the same having gone out for want of air or having been extinguished by the water made by the ship. To get the ship off, it was necessary to slip one anchor with fifteen fathoms chain. On heaving up the other it was found that the anchor-stock was broken and that the ship in grounding had fallen atop of the anchor, and from the extreme violence with which she had been pounding for several hours there was every reason to believe that her bottom was very dangerously injured. On April twentieth, in the morning, there being no prospect of relief or assistance at that place, the captain got to sea again, and the crew positively refusing to continue the voyage without an examination and repairs, and the extent of the damage to the ship's bottom being unknown, though supposed to be very serious, the captain judged it best for the general
152 safety to make for the nearest port where succor and repairs could be obtained; and the port of Montevideo being such port, he made sail therefor, and arrived there on or about April twenty-seven, 1866. That upon an examination and survey of the ship there, extensive repairs were found necessary to enable her to continue her voyage with any prudent regard to safety, and it was judged most for the benefit of all concerned that she should be repaired and continued the voyage rather than the cargo should be transhipped. That the first and necessary cost and expenses of such repairs, including the unlading and relading and the storage of the cargo on shore, amounted to thirty-five thousand dollars. ($35,000,) or thereabouts, to defray which the captain, being without money, credit, or resources of any kind, and the port of Montevideo being a strange and foreign port, where the owners of the ship had neither agent nor correspondent, was forced to sell, and did sell, as of right he might do, a considerable portion of the cargo, which sale was and is the same sale referred to in article third of each of said libels respectively.

That such sale was so managed, both as to the mode thereof and the cargo selected, as to protect as far as possible the interest
153 of the owners thereof; but Montevideo being a remote and small place, without much market or demand for such goods and merchandise as were on board, those sold were sold unavoidably at a considerable sacrifice; but what was the precise value, either at the port of New York or of San Francisco, of the goods and merchandise thus sold, or whether or not any portion of them belonged to the libellants in the said several libels respectively, or any of them, or if any did, what was its value, this respondent has no knowledge, information, or belief, and therefore denies the allegations in that behalf propounded in said articles third and fourth of each of said several libels respectively.

Sixth. That this respondent has heard, and believes it to be true, that the said ship, having completed her repairs at the said port of Montevideo, resumed her voyage and arrived in said port of San Francisco on or about December seventh, 1856, as in article fifth of each of said several libels alleged.

Seventh. That as to the matters in article sixth of each of said several libels respectively alleged, this respondent is informed and believe that the same are untruly alleged, and he therefore denies the same and each and every of them, for the truth and fact
154 was and are, as he is informed and believes and therefore alleges, that the injury and damage to the said ship at the harbor or bay of San Antonio were incurred by the said captain voluntarily and deliberately for the general safety, and especially for the safety of the cargo and the lives of those on board, and that consequently all loss and damage sustained by said ship, at said bay of San Antonio, including the value of the anchor and chain lost there as aforesaid, and also the costs and expenses of the repairs aforesaid at Montevideo, and all other the necessary costs and expenses incurred while there and in getting to sea again, together with the costs and expenses of navigating and subsisting the ship, including the wages and provisions of the captain, officers, and crew, from the said April 14, 1856, on which day the said ship was as aforesaid diverted from her course in order to make a harbor, down to the tenth day of September, 1856, when she left the said port of Montevideo to resume her voyage, all which amount, in the whole, to the sum of forty thousand dollars, ($40,000,) or thereabouts, and are of right and according to the law and usages of the admiralty a subject of general average and contribution, to be borne by the said ship, her freight, and her cargo, and also by the owners thereof in
155 their just proportions. And the said goods and merchandise having been sold by necessity as aforesaid to defray the expenses incurred and payable at Montevideo, the same and the just value thereof, and all loss and damage incurred to the owners thereof respectively, and to the said libellants in the said several libels respectively are to be of right included in the said general average to be borne as aforesaid.

That in reference to said general average, this respondent is

informed and believes that the value of the said ship is not over thirty-five thousand dollars, ($35,000,) that the amount of the freight is thirty-six thousand dollars, ($36,000;) but as to the total value of the cargo which was laden on board at New York he has no knowledge, information, or belief.

That, as respondent is informed and believes, a large part of the cargo, being nearly one moiety thereof, was carried in safety by said ship to the said port of San Francisco, and upon her arrival there as aforesaid was delivered to the several owners thereof respectively, and that among said cargo a large quantity of goods, wares, and merchandise was safely delivered to the said libellant in each of said libels respectively, of great value, but of what precise value respondent has no knowledge.

156 And the said respondent is informed and believes, and therefore alleges and propounds, that all of the goods, wares, and merchandise, laden on board of said ship at New York, to be delivered at San Francisco as aforesaid to all the said libellants or any of them, were, in fact, safely delivered to them and each of them at San Francisco, save and excepting only those goods, wares, and merchandise which were sold of necessity and of right at Montevideo as aforesaid; and he denies that any goods, wares, and merchandise were lost to the said libellants or any of them, to the damage of them or any of them respectively, in manner and form, as in their several libels untruly alleged and propounded, or so as to entitle them or any of them to the relief as prayed for in their several libels respectively.

That no sufficient adjustment and account of the general average and contribution in this case had ever been had and made, as respondent is informed and believes. That he has heard and believes that what purported to be such adjustment and account was, previous to the commencement of the suit of the said libellants, William C. Annan, William H. Tallmadge, and James W. Embury, made

157 or undertaken at the instance and request, but as he is informed and believes the said adjustment was not correctly made, nor made according to the facts, nor upon the proper principles of law, nor according to the just proportions chargeable upon each thing and party interested; and that the said libellants, Annan, Tallmadge, and Embury, though requested by the said Coffin and Titcomb, the owners of said ship, and though having, as the charterers of said ship, the exclusive means of making such adjustment, have always hitherto neglected and refused to have a correct and sufficient adjustment made in the premises.

Eighth. That, upon a proper adjustment being made in a suit or proceeding, duly taken for the purpose by the said libellants, or some of them, as they shall be advised, it will be found what are the just proportions of the said loss and the said costs and expenses to be borne and contributed by the said ship, freight, and cargo, and by the owners thereof, and by the said several libellants, in each of the said several libels respectively—if they are, as they allege, owners of some portion of the said cargo respectively, and especially by the

said ship. And it will then and thereby be found, as he is
158 informed and believes, that the amount chargeable upon said ship, on account of the premises, in favor of said several libellants, and each of them, so far from being the sum or sums claimed by them, and each of them, in their said libels respectively, is a very much smaller sum.

Ninth. That, as respondent is informed and believes, the said libellants, Annan, Tallmadge, and Embury, and still indebted to the owners of said ship, upon the said charter-party, in the sum of thirty thousand dollars, ($30,000,) balance due and unpaid on account of the freight which they undertook and promised, by said charter-party, as aforesaid, to pay; and that they have also collected from the said several other owners of the cargo a large sum of money, as the general average and contribution of them, or some of them, respectively; but what amount, this respondent does not know.

Tenth. That, as respondent is informed and believes, all the said several libellants, and each of them, had, before the commencement of this suit, notice of all the material facts hereinbefore by him alleged and propounded.

159 Eleventh. That, by reason of the premises, the said several libellants are not, nor is any of them, entitled to the relief as prayed for in his said libel respectively.

Wherefore the said respondent prays that this honorable court will be pleased to pronounce against the said several libels, and each of them respectively, and to decree a restitution of the said ship to the respondent, and otherwise right and justice to administer in the premises.

HENRY PEARSONS.
EUGENE CASSERLY, *Proctor.*

On the 17th day of April, 1857, personally appeared HenryPearsons, the above-named respondent, and was sworn to the truth of the foregoing answer and claim. Before me,

W. H. CHEVERS,
Deputy Clerk.

160 This charter-party, made and concluded upon in the city of New York, this twenty day of November, in the year one thousand eight hundred and fifty-five, between Charles H. Coffin, for owner of the ship "Star of Hope," of Newburyport, Mass., of the burden of eleven hundred and ninety-eight tons, or thereabouts, now lying in the harbor of Portsmouth, of the first part, and Annan, Talmadge & Co., of New York, and San Francisco, California, of the second part, witnesseth, that the said party of the first part, for and in consideration of the covenants and agreements hereinafter-mentioned, to be kept and performed by the said party of the second part, doth covenant and agree on the freighting and chartering of the said vessel unto the said party of the second part, for a voyage from the port of New York to San Fransisco, California, on the terms following, that is to say:

First. The said party of the first part doth engage, that the said vessel, in and during the said voyage, shall be kept tight, staunch, well-fitted, tackled, and provided with every requisite, and with men and provisions necessary for such a voyage.

Second. The said party of the first part doth further engage, that the whole of said vessel (with the exception of the cabin, the
161 deck, and the necessary room for the accommodation of the crew, and of the sails, cables, and provisions) shall be at the sole use and disposal of the said party of the second part during the voyage aforesaid.

Third. The said party of the first part doth further engage to take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the said party of the second part or their agent may think proper to ship under deck, with light freight in state rooms, and not to exceed the bulk of fifty barrels turpentine (or its equivalent) on deck.

And the said party of the second part, for and in consideration of the covenants and agreements, to be kept and performed by the said party of the first part, doth covenant and agree with the said party of the first part to charter and hire the said vessel, as aforesaid, on the terms following, that is to say:

First. The said party of the second part doth engage to provide and furnish the said vessel, at New York, with a full cargo of lawful merchandise under deck, with light freight in state rooms, and not to exceed the bulk of fifty barrels turpentine (or its equivalent) on deck.

Second. The said party of the second part doth further engage to pay the said party of the first part, or their agent, for the
162 charter of freight of said vessel during the voyage aforesaid, in manner following, that is to say, thirty-six thousand dollars fee of commission at either port, and payble at San Francisco, as follows, viz: Six thousand dollars before breaking bulk; ten thousand dollars additional when the cargo is half delivered, and ten thousand dollars more when the cargo is three-quarters delivered; the balance after final delivery of cargo, in cash (or its equivalent); the bills of lading to be held by the captain of ship as security for the payment of the charter. It is further agreed between the parties to this instrument that the said party of the second part shall be allowed for the loading and discharging of the said vessel at the respective ports aforesaid, lay days as follows, that is to say, sixty running lay days for loading and discharging in New York and San Francisco. It is further agreed that the party of the second part are to employ their own stevedores, providing that they will do the work on the same terms as the party of the first part can employ prudent and careful stevedores to do it for; and, in case the vessel is longer detained, the said party of the second part agree to pay to the said party of the first part demurrage, at the rate of one hundred Spanish milled dollars per day for each and every day so detained, pro-
163 vided such detention shall happen by default of the said party of the second part or their agent; owners to allow

charterers twenty-five dollars per day for every day not used. It is further understood and agreed, that the cargo or cargoes are to be received and delivered according to the custom and usages at the ports of loading and discharging. It is also further understood and agreed, that this charter shall commence when the vessel is ready to receive cargo at her place of loading, and notice thereof is given to the party of the second part or to their agent; lay days to commence when the captain reports himself ready to discharge or receive cargo.

To the true and faithful performance of all the foregoing covenants and agreements the said parties, each to the other, do hereby bind themselves, their executors, administrators, and assigns, and also the said vessel, freight, tackle, and appurtenances, and the merchandise to be laden on board, each to the other, in the penal sum of thirty-seven thousand dollars.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals this fifth day of December, 1855.

[SEAL.] (Signed) ANNAN, TALMAGE & CO.
[SEAL.] (Signed) CHAS. H. COFFIN,
For Owners.

Signed and delivered in the presence of—

(Signed) GEORGE A. HAZARD.

164 Endorsed: Filed April 18th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

165 District Court of the United States for the northern district of California.

Claimant's stipulation for costs.

UNITED STATES OF AMERICA:

Whereas fifteen certain several libels were filed in this court, on the twenty-first and thirtieth day of March, in the year of our Lord, one thousand eight hundred and fifty seven, by—1. William C. Annan *et al*; 2. Jesse Sawyer; 3. Benj. F. Nesbitt; 4. Adrian and Story; 5. Moore and Folger; 6. J. D. Wing; 7. Park and White; 8. J. M. Pommares *et al*; 9. Bond and Hall; 10. Crosby and Dibblee; 11. Jones and Stevens; 12. D. R. Provost, 13; J. Y. Hallock *et al*; 14. David H. Burke; and 15. James Patrick *et al*, respectively, against the ship "Star of Hope," for reasons and causes in said several libels mentioned; and the said Henry Pearsons, master of said ship, respondent, and George H. Kellogg and Francis E. Flint, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said Henry Pearsons, respondent, or his sureties, execution may issue against their goods, chattels, and lands, for the sum of one thousand dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be and each of them is bound in the sum of one thousand dollars, conditioned

166 the said Henry Pearsons, the respondent above named, shall pay all costs and charges that may be awarded against him in any of the said suits by this court.

HENRY PEARSONS.
GEO. H. KELLOGG.
FRANCIS E. FLINT.

Taken and acknowledged, this 18th day of April, 1857, before me.
W. H. CHEVERS, *U. S. Commissioner.*

NORTHERN DISTRICT OF CALIFORNIA, *ss*:

Geo. H. Kellogg and Francis E. Flint, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of one thousand dollars, over and above all his just debts and liabilities.

GEO. H. KELLOGG.
FRANCIS E. FLINT.

Sworn to this 18th day of April, 1857, before me.
W. H. CHEVERS, *U. S. Commissioner.*

Endorsed: Filed April 18, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

167 United States District Court for the northern district of California.—In admiralty.

Consignees of the Ship

Libel.—(Embury et al.)

To the Hon. Ogden Hoffman, U. S. Judge, &c.:

The libel and complaint of W. C. Annan, Jas. W. Embury, and Geo. Hazzard, merchants, transacting business in the city of San Francisco, under the firm of W. C. Annan & Co., against the ship "Star of Hope," her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows:

First. That the said libellants contracted with the owners or agents of the said ship, "Star of Hope," to perform the duties of consignees of the said vessel, and especially to attend to the adjustment, collection, and payment of a general average incurred by the said vessel, on her voyage from New York to San Francisco.

Second. That these libellants, in performance of their duties as consignees aforesaid, did discharge the portion of cargo brought to this port; that they warehoused the same, and had an appraisement made of the value of the property discharged, as well as of that portion sold, and employed an adjuster for the purpose of stating a
168 general average account of contribution between the parties, all of which being done, they also assumed the responsibility and discharged the duties of consignee by collecting from the

owners of goods, monies, and funds, to reimburse the contribution when ascertained, and generally performed numerous and responsible acts in the purview of their relations to the vessel, whereby they have incurred certain liabilities, a schedule of which is hereto annexed, amounting to about ten thousand dollars.

Third. That the owners and master of the said ship, although hereto duly requested, have hitherto failed and refused, and still fail and refuse, to pay the said sum or any part thereof to their libellants.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and freight, wheresoever the same shall be found;

169 and that all persons claiming any right, title, or interest therein, may be cited to appear and to answer upon oath, all and singular, the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the libellants, as aforesaid, with costs; and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

J. W. EMBURY.

Sworn to and subscribed, April 22, 1857, before me.
W. H. CHEVERS, *Deputy Clerk.*
J. P. HAVEN, *Proctor.*

170 *Schedule of liabilities.—Ship "Star of Hope."*

1. A. D. Clark:

Service as clerk assisting in taking account of cargo put in store	60 00

2. Advertising:

Bulletin; notices of warehousing, appr., &c	20 00
Alta; notices of warehousing, appr., &c	10 00
Chronicle; notices of warehousing, appr., &c	23 00
Alta; notices of warehousing, appr., &c	5 00
Notices of completion of the average and delivery of certificates, to be inserted in 3 papers	15 00

3. Stationery:

Books, &c., for warehouse and appraisement	15 00

4. Jas. Y. Hamm:

68 days service as clerk, engaged at the warehouse in assisting the appraisers in opening and examining the cargo, and recording value of property when appraised, $10	680 00

5. Ira P. Rankin and Charles Hosmer:

For opening and examining goods, appraising sound and damaged values, ascertaining the market values
171 of goods sold in Montevideo to raise funds, ascertaining deficiencies, and reporting upon claims, extending over a period of two months 1,000 00

6. Flint's warehouse:

1 month's storage on 22 crates crockery 25 00

7. Flint, Peabody & Co.'s warehouse:

Storage 810 tons cargo, warehoused for examination and appraisement, 2 mo's, at $1 per ton per mo 1,620 00

8. U. S. Drayman:

Cartage of 22 crates crockery to bonded warehouse 22 00

9. R. T. Reynolds:

Drayage and wharfage of 810 tons goods from dock to warehouse, at $1 ..... 810 00

10. James L. Tracy:

Labor in receiving and opening, assorting and overhauling cargo while under examination and discharge, 69 days, at $4 per man, as variously employed 552 00

172 11. Jones, Doyle, Barber, and Boyd:

Profession services in instituting suit for possession of certain goods 50 00

12. The Liverpool and London Fire Ins. Co:

Premium of insurance upon goods stored in warehouse during appraisement, $7,500, for 60 days, at $\frac{5}{8}$ pr. c. 468 75

13. Geo. T. Knox:

Notarial services preparing affidavits, viz: Annan, Talmadge & Co., breakage, and Jos. Genella, Bernard Egar & Co, J. P. Rankin & C. Hosmer, $5 ea 25 00

14. Average bond:

Drawing bond and obtaining signature to the same 35 00

15. Adjuster.

Translation of bills, examining, stating, and apportioning general average and particular loss, aiding in the appraisement, professional services in examining and rejecting numerous claims and settling others, and general services from Decemb. 7 to March 10th 1,863 00

173. Three copies of average statement 150 00

16. Commissions:

Annan, Talmage & Co., for collecting and paying general average, per rule of Chamber of Commerce..... 2,666 79

$10,115 68

Endorsed: Filed April 22, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

174 District Court of the United States for the northern district of California.

Libellants' stipulations for costs.—Fieed the 22d day of April, 1857.

UNITED STATES OF AMERICA, *ss*:

Whereas a libel was filed in this court, on the 22d day of April, in the year of our Lord one thousand eight hundred and fifty-seven, by W. C. Annan & Co. (J. W. Embury) against the ship "Star of Hope," for reasons and causes in the said libel mentioned, and the said J. W. Embury, and David H.Burke and Wm. F. Story, his sureties, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the said libellants or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be and each of them is bound in the sum of five hundred dollars, conditioned the libellants above named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal by the Appellate Court.

J. W. EMBURY.
175 DAVID H. BURKE.
WM. F. STORY.

Taken and acknowledged this 22nd day of April, 1857, before me.
W. H. CHEVERS.
U. S. Commisioner.

NORTHERN DISTRICT OF CALIFORNIA:

D. H. Burke and W. F. Story, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

DAVID H. BURKE.
WM. F. STORY.

Sworn to this 22nd day of April, 1857, before me.
W. H. CHEVERS,
U. S. Commissioner.

176 *Monition.—(J. W. Embury et al.)*

NORTHERN DISTRICT OF CALIFORNIA, *ss*:

The President of the United States of America to the marshal of the northern district of California, greeting:

Whereas a libel hath been filed in the District Court of the United States for the northern district of California, on the 22nd day of April, in the year of our Lord one thousand eight hundred and fifty-seven, by J. W. Embury *et als*, against the ship "Star of Hope," her tackle, apparel, and furniture, for advance made for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made; and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants, you are therefore hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same; and to give due notice to all persons claiming the
177 same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern district of California, on the fifth day of May next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Hon. Ogden Hoffman, jun., judge of said court, at the city of San Francisco, in the northern district of California, this 22 day of April, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 81st.

[SEAL.] JOHN A. MONROE, *Clerk*.
By W. H. CHEVERS, *Deputy*.
J. P. HAVEN,
Proctor for Libellants.

178 In obedience to the within monition, I attached the ship therein described, on the 22nd day of April, 1857, and have given due notice to all persons claiming the same, that this court will, on the fifth day of May next (if that day should be a day of jurisdiction; if not, on the next day of jurisdiction thereafter) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated April 22, A. D. 1857.

JAS. Y. McDUFFIE,
U. S. Marshal.
By E. O. F. HASTINGS, *Deputy*.

Endorsed: Filed May 5th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

179 At a stated term of the District Court of the United States of America, for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the fifth day of May, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the honorable Ogden Hoffman, jr., district judge.

Order on return of monition.

J. W. EMBURY *et als.*
vs.
SHIP "STAR OF HOPE."

The marshal having returned upon the monition in this cause, that he had attached the said ship, her tackle, etc., and had given notice to all persons claiming the same that this court would on this day proceed to the trial and condemnation thereof, should no claim be interposed for the same.

On motion of J. P. Haven, proctor for the libellants, proclamation was made for all persons having anything to say why the ship should not be condemned and sold to answer the prayer of the libellant, E. Casserly, esq., appeared on behalf of the claimants, and on
180 motion was allowed 4 days to file claim and answer.

On like motion, it was ordered that default of all parties not in court be taken.

Endorsed: Filed May 5th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

181 In the District Court of the United States for the northern district of California.—In admiralty.

Answer of claim.

To the honorable Ogden Hoffman, judge of the District Court aforesaid:

And now comes Henry Pearsons, the master of the ship "Star of Hope," and for claim and answer to the libel of William C. Annan, James W. Embury, and George Hazzard, filed against the said ship "Star of Hope," her tackle, apparel, and furniture, alleges and propounds as follows:

First. That Charles H. Coffin and B. B. Titcomb, both of the State of Massachusetts, and each of whom is now and ever has been a non-resident and absent from this State, are the true and bona fide owners of said ship, and no other person is the owner thereof, and he the respondent is the master thereof duly appointed by them at New York, on or about February 20, 1857. And he claims said ship as the master and lawful bailee thereof.

Second. The respondent not confessing or acknowledging any of the matters in the said libel contained to be true in manner
182 and form as the same are therein alleged, alleges and insists in the first place that he is under no obligations by law to

answer the said libel, and this court has no authority to hear and determine the same, and that process herein issued improvidently because he says the matters in said libel propounded and alleged do not constitute a cause of contract civil and maritime within the jurisdiction of this court. And therefore this court ought not further to proceed therein.

And the respondent in case his said objection and plea to the jurisdiction of this court, and to the sufficiency of the said libel should be repelled and overruled, then by way of further answer to the said libel he alleges and propounds as follows:

Third. As to the several matters and things in article first, second, and third, of the said libel alleged and pleaded, he has no knowledge, information, or belief, and therefore denies the same to be true in manner and form as the same are therein propounded and alleged, except as the same are hereinafter admitted or explained.

Fourth. That, as the respondent is informed and believes, on or
183 about November 20, 1855, at the city of New York, the said Coffin and Titcomb, the owners of said ship, did demise and let to the said libellants, William C. Annan and James W. Embury, together with William H. Talmage, and at their instance and request, the said ship "Star of Hope," for a voyage from New York to San Francisco, by a certain written contract or charter-party of affreightment, of which a copy is hereto annexed marked "A," which the respondent prays may be made a part of this answer.

Fifth. That, as the respondent is informed and believes, by and under said charter-party, the said Annan, Embury, and Talmage, became and were the charterers of said ship and, as such charterers, they loaded on board of her at said part of New York large quantities of goods, wares, and merchandise, on their own account, and also received on board of her at said port certain other large quantities of goods, wares, and merchandise of other shippers, upon the promise and undertaking of them the said Annan, Embury, and Talmage, to deliver the same to the respective consignees thereof at the said port of San Francisco.

Sixth. That, as the respondent is informed and believes,
184 that said libellants, Annan, Embury, and Hazzard, were and are the assignees of the said charter-party, and in all respects the successors in interest of the said Annan, Embury, and Talmage, the charterers of said ship, and have assumed all the rights and liabilities of the latter in reference thereto, and as such assignees and successors they did upon the arrival of said ship at the said port of San Francisco, on or about December 7, 1856, claim the control and possession of said ship and her cargo, and they obtained and had the same until after the unlading and delivery of her cargo were fully completed, and they delivered all her cargo then on board, or very nearly all to the several consignees thereof, and collected the freight therefor, and also received so much of said cargo as was deliverable to themselves.

Seventh. That, as the respondent is informed and believes, all and singular whatever was done, undertaken, or assumed by the said

Annan, Embury, and Hazzard, the libellants in reference to the said alleged adjustment of a general average upon said ship, or in the premises as alleged in the said libel was done, undertaken, and assumed by them on their own account, as the successors in interest of the said Annan, Embury and Talmage, and under the
185 circumstances in articles fourth, fifth, and sixth of this answer fully above set forth, and not in or for the account of the said ship "Star of Hope," or her owners, or at their instance and request.

Eighth. For a further answer to said libel the said respondent says he has heard and believes it to be true, that the said libellants of their own motion, and for their own account, and not at the instance and request of the owners of the said ship, did, after the arrival of said ship at said port of San Francisco, undertake and attempt a certain pretended adjustment of an alleged general average and contribution upon the said ship, and did also undertake the collection of the same from the several persons interested, liable to pay any portion of the same; but that the said adjustment and the said collection were so incorrect and defective in all respects, and so improperly conducted by them, the said libellants, as to be totally worthless.

Ninth. That if any such disbursements were made, expenses and liabilities incurred by the said libellants, as in their said libel averred, they were and are a portion of the general average
186 upon the said ship, her freight, and cargo, to be borne by them all ratably, and among them as well by the cargo carried by said ship for said libellants and claimed by them as their property, and as such received by them out of such ship, said cargo amounting to a great quantity, but how much precisely is unknown to this respondent as by all of said cargo, which belonged to and was delivered, as aforesaid, to others; and that said libellant having, as aforesaid, in the sixth article of this answer fully set forth the full provision and control of said ship and her cargo until the unlading and delivery thereof were fully completed, had such possession of more than enough of such cargo, both of their own property and that of the other consignees, to pay or secure them for so much of said general average as the cargo was or could be liable for, being by far the greater portion thereof. But nevertheless the said libellants did, as the respondent is informed and believes, the whole of such cargo belonging to the consignees, and thus liable to their respective consignees thereof, (who are very numerous, and many of whom are irresponsible persons,) without first obtaining the payment of their said several proportions of the said general average,
187 and having thus waived their lien thereon, he insists they have no right or claim on or against said ship for such proportion as said cargo was liable to pay.

Tenth. That, as the respondent is informed and believes, the said libellants did, by means of the collection in the said eighth foregoing article mentioned, receive a large sum of money, of which the precise amount is unknown to him, for which they have omitted in

their said libel to give any credit to the said ship and her owners, but for which the said ship is entitled to a credit by way of set-off in this suit. And he further alleges, that of the sum of thirty-six thousand dollars fixed in said charter-party, to be paid as the price and hire of said ship, and for which the said libellants have, in consideration of the premises as aforesaid made themselves liable and promised to pay the same, the sum of thirty thousand dollars still remains due and unpaid, which, the respondent claims, should be allowed by way of set-off in this suit against said libellants, or so much thereof as may be necessary to extinguish their said demand in case the same, or any part thereof, should be allowed by this court.

188 Eleventh. That the respondent was appointed captain of said ship as aforesaid, [ship as aforesaid,] at New York, on February 20, 1857, in lieu of her former captain, and directed to take charge of her at San Francisco, which he did upon his arrival there, about March 1, 1857; and nearly all of the matters and things in said libel and in this answer having taken place before his arrival and without his personal knowledge, he has been obliged to aver and allege respecting the same upon his information and belief.

Twelfth. That all and singular the premises are true.

Wherefore the respondent prays this honorable court to pronounce against the libel aforesaid, and to condemn the said libellants in costs, and otherwise right and justice to administer in the premises.

HENRY PEARSONS,
Respondent.
EUGENE CASSERLY,
Proctor, &c.

On the eighth day of May, 1857, appeared personally Henry Pearsons, the above-named respondent, and was sworn to the truth of the foregoing claim and answer.

189 Before me—

W. H. STEVENS,
Deputy Clerk.

Exhibit "A."

This charter-party, made and concluded upon in the city of New York, this twenty- day of November, in the year one thousand eight hundred and fifty-five, between Charles H. Coffin, for owners of the ship "Star of Hope," of Newburyport, Mass., of the burden of eleven hundred and ninety-eight tons or thereabouts, now lying in the harbor of Portsmouth, of the first part, and Annan, Talmadge & Co., of New York and San Francisco, California, of the second part, witnesseth: That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned to be kept and performed by the said party of the second part, doth covenant and agree on the freighting and chartering of the said vessel

unto the said party of the second part, for a voyage from the port of New York to San Francisco, California, on the terms following, that is to say:

First. The said party of the first part doth engage that the
190 said vessel, in and during the said voyage, shall be kept tight, staunch, well fitted, tackled, and provided with every requisite, and with men and provisions necessary for such a voyage.

Second. The said party of the first part doth further engage that the whole of the said vessel (with the exception of the cabin, the deck, and the necessary room for the accommodation of the crew, and of the sails, cables, and provisions) shall be at the sole use and disposal of the said party of the second part during the voyage aforesaid.

Third. The said party of the first part doth further engage to take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the said party of the second part, or their agent, may think proper to ship under deck, with light freight in state-room, and not to exceed the bulk of fifty barrels turpentine (or its equivalent) on deck.

And the said party of the second part, for and in consideration of the covenants and agreements to be kept and performed by the said party of the first part, doth covenant and agree, with the said
191 party of the first part, to charter and hire the said vessel, as aforesaid, on the terms following, that is to say:

First. The said party of the second part doth engage to provide and furnish the said vessel, at New York, with a full cargo of lawful merchandise under deck, with light freight in state-rooms, and not to exceed the bulk of fifty barrels turpentine (or its equivalent) on deck.

Second. The said party of the second part doth further engage to pay to the said party of the first part, or their agent, for the charter of freight of said vessel, during the voyage aforesaid, in manner following, that is to say: Thirty-six thousand dollars, free of commissions, at either port, and payable at San Francisco, as follows, viz: Six thousand dollars before breaking bulk; ten thousand dollars additional when the cargo is half delivered, and ten thousand dollars more when the cargo is three-quarters delivered; the balance after final delivery of cargo, in cash, (or its equivalent) The bills of lading to be held by the captain of ship as security for the payment of the charter.

It is further agreed between the parties to this instrument, that the said party of the second part shall be allowed, for the
192 loading and discharging of the said vessel at the respective ports aforesaid, lay days as follows, that is to say: Sixty running lay days for loading and discharging in New York and San Francisco.

It is further agreed, that the party of the second part are to employ their own stevedores, providing that they will do the work on the same terms as the party of the first part can employ prudent and careful stevedores to do it for; and in case the vessel is longer

detained, the said party of the second part agree to pay to the said party of the first part demurrage, at the rate of one hundred Spanish milled dollars per day for each and every day so detained, provided such detention shall happen by default of the said party of the second part, or their agent. Owners to allow charterers twenty-five dollars per day for every lay day not used.

It is further understood and agreed, that the cargo or cargoes are to be received and delivered according to the custom and usage at the ports of loading and discharging.

It is also further understood and agreed, that this charter shall commence when the vessel is ready to receive cargo at her place of loading, and notice thereof is given to the party of the second
193 part, or their agent. Lay days to commence when the captain reports himself ready to discharge or receive cargo.

To the true and faithful performance of all the foregoing covenants and agreements the said parties each to the other do hereby bind themselves, their executors, administrators, and assigns, and also the said vessel, freight, tackle, and appurtenances, and the merchandise to be laden on board, each to the other in the penal sum of thirty-seven thousand dollars.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals this fifth day of December, 1855.

[SEAL.] (Signed) ANNAN TALMAGE & CO.
[SEAL.] (Signed) CHA'S H. COFFIN,
For Owners.

Signed and delivered in the presence of—
(Signed) GEORGE H. HASSARD.

In the District Court of the United States, northern district of California.—In admiralty.

WILLIAM C. ANNAN, JAMES W. EMBURY, George Hazard,
vs.
194 SHIP "STAR OF HOPE."

It is agreed that the within copy of the charter-party, referred to in the answer of the claimant in this cause, and made a part thereof, but omitted by inadvertence to be annexed thereto at the time of filing the same, may be annexed now to the said answer with the same force and effect in all respects as if the same had been annexed to the said answer at the time of filing the same.

April 6, 1858.

J. P. HAVEN,
Proctor for Libellant.
C. TEMPLE EMMET,
Proctor for Libellants.

Endorsed: Filed May 8, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

District Court of the United States for the northern district of California.

Claimant's stipulation for costs.—Filed the eighth day of May, 1857.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 22nd day of April, in the year of our Lord one thousand eight hundred and fifty-
195 seven, by J. W. Embury *et als.* against the ship "Star of Hope," for reasons and causes in the said libel mentioned; and whereas Henry Pearson has this day filed his answer herein, and claim, as master of said ship, and agent of the owner thereof; and the said Henry Pearson, and Geo. H. Kellogg and J. L. Willcutt, his sureties, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the said respondent or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the respondent above named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal by the Appellate Court.

HENRY PEARSONS.
GEO. H. KELLOGG.
J. L. WILLCUTT.

Taken and acknowledged this eighth day of May, 1857, before me.
W. H. CHEVERS,
U. S. Commissioner.

196 NORTHERN DISTRICT OF CALIFORNIA, *ss:*

George H. Kellogg and J. L. Willcutt, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

GEO. H. KELLOGG.
J. L. WILLCUTT.

Sworn to this eighth day of May, 1857, before me.
W. H. CHEVERS,
U. S. Commissioner.

At a stated term of the District Court of the United States of America for the northern district of California, held at the court-house, in the city of San Francisco, on Thursday, the 18th day of June, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Ogden Hoffman, district judge.

In the matter of the various suits pending against the ship "Star of Hope."

Order allowing ship to be bonded in her appraised value.

197 This cause coming on to be heard on the motion that the said ship be bonded in the amount of the appraised value thereof, and having been argued by the advocates of the respective parties, and due deliberation being had in the premises, it is ordered by the court that the said ship, her tackle, &c., be delivered to the claimants upon their executing a bond in the appraised value thereof, with sufficient sureties, to be approved of by the judge, said appraisement to be had in pursuance of the rules of this court.

Endorsed: Filed June 18, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

198 In the District Court of the United States for the northern district of California.—In admiralty.

Stipulation for appointment of appraisers.

WILLIAM C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE."

JESSE SAWYER
vs.
SAME.

ADRAIN & STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

CROSBY & DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

BENJ. F. NESBITT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARK & WHITE
vs.
SAME.

BOND & HALL
vs.
SAME.

JONES & STEVENS
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK
vs.
SAME.

JAMES W. EMBURY *et al.*
vs.
SAME.

199 In all the above-entitled cases an order having been duly made by this court for the delivery of the said ship "Star of Hope," her tackle, apparel, and furniture to the claimant, Henry Pearsons, upon his giving and filing a stipulation, with sufficient sureties, in her appraised value, it is now agreed that Amos Noyes, a port warden of the port of San Francisco, and Daniel Gibb, merchant, be and they are hereby appointed the appraisers for the said appraisement, with the power, in case of their disagreement, to call in W. F. Babcock, merchant, as a third appraiser, to determine and decide between them.

Dated San Francisco, June 20, 1857.

EUGENE CASSERLY,
For Claimant.
C. TEMPLE EMMET,
For Libellant.

Endorsed: Filed June 20, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

REC. 402—6

200 In the District Court of the United States for the northern district of California.—In admiralty.

Order for appointment of appraisers.

WILLIAM C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE."

JESSE SAWYER
vs.
SAME.

ADRAIN & STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

CROSBY & DEBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

BRNJ. F. NESBITT
vs.
SAME.

MOORE & FOLGER
vs
SAME.

PARK & WHITE
vs.
SAME.

BOND & HALL
vs.
SAME.

JONES & STEVENS
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

JAMES W. EMBURY *et al.*
vs.
SAME.

201 In all the above entitled cases an order having been heretofore duly made by this court for the delivery of said ship "Star of Hope" her tackle, apparel, and furniture, to the claimant, Henry Pearsons, upon giving and filing a stipulation, with sufficient sureties, in her appraised value, and upon reading and filing the written stipulation of the respective proctors of the several parties in said cases that Amos Noyes, a port warden of the port of San Francisco, and Daniel Gibb, merchant, be appointed the appraisers to appraise and value the said ship, her tackle, &c., with power in case of agreement to call in W. F. Babcock, merchant, as a third appraiser, to determine and decide between them.

It is ordered that the said ship "Star of Hope," her tackle, &c., be appraised and valued at their just and true value, and that the said Amos Noyes and Daniel Gibb be and they are hereby appointed the appraisers to value and appraise the same accordingly, with power, in case of agreement, to call in said W. F. Babcock as a third appraiser, to determine and decide between them, and they are directed to transmit their said appraisement subscribed by them to the aforesaid court, or the clerk thereof, on or before the twenty-fourth day of June, 1857.

202 Dated San Francisco, June 20, 1857.

OGDEN HOFFMAN,
U. S. District Judge.

Endorsed: Filed June 20th, 1857. John A. Monroe, clerk, by W. A. Chevers, deputy.

Report of Appraisers.

We, the undersigned appraisers, appointed by order of the Hon'l Ogden Hoffman, judge of the District Court of the United States for the northern district of California, which order is dated the 20th day of June, 1857, after due public notice being given to the parties interested, did on this 23rd day of June, 1857, at ten o'clock a. m., repair on board the American ship "Star of Hope," now lying at anchor in the harbor of San Francisco, and after a careful examination we are o

opinion that the just and true value of the said ship, "Star of Hope," together with her tackle, apparel, and furniture, is forty thousand dollars, and we therefore jointly and severally do value and
203 appraise the said ship, together with her tackle &c., as she now lies, at the sum of forty thousand dollars, American currency.

Dated at San Francisco, this 23rd day of June, A. D. 1857.

AMOS NOYES.
DANIEL GIBB.

Fees, $50 each	$100
Boat hire	4
	$104

Endorsed: Filed June 23, 1857. John A Monroe, clerk, by W. H. Chevers, deputy.

204 U. S. District Court, nor. dis. of California.—In admiralty.

Notice of appeal from appraisement.

J. D. WING *et al*
vs.
SHIP "STAR OF HOPE," &c., &c.

SIR: You will please take notice that a motion for revision of the appraisement of the ship "Star of Hope," in the above-named suit, will be made on the 2d day of July next, or on such day thereafter as the court may be in session.

San Fran'co, June 25, 1857.

J. P. HAVEN,
Proctor for Libellants.
C. TEMPLE EMMET,
Proctor for Libellants.

Endorsed: Filed June 25, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

205 U. S. District Court, nor. dis. of California.—In admiralty.

Notice of objections to sureties.

J. D. WING *et al.*
vs.
SHIP "STAR OF HOPE."

JUNE 25, 1857.

Please take notice that objections to the sureties and their sufficiency, offered for the delivery of the ship "Star of Hope," will be

presented on the 2nd day of July next, or on the day next ensuing in which the court may be in session.

Resp'y,

J. P. HAVEN, *Proctor for Libellants.*
E. CASSERLY, *Proctor for Resp'ts.*

Endorsed: Filed June 25, 1857. John A. Monroe, clerk, by W. H. Chevers, clerk.

206 *Assignment of claim.*

Whereas the undersigned, William C. Annan, James W. Embury, and George A. Hazzard, on the 22d day of April, A. D. 1857, filed their libel in the clerk's office of the District Court of the United States for the northern district of California, and instituted proceedings in said court in admiralty against the ship "Star of Hope," for the purpose of recovering the sum of ten thousand one hundred and fifteen dollars and sixty-eight cents, which amount the said libellants claim to be due and owing to them from the said ship, or her owner or owners, (the particulars of which claim are fully set forth in said libel,) which proceedings are still pending in said court and undetermined.

Now, know all men by these presents, that we, the said William C. Annan, James W. Embury, and George A. Hazzard, for and in consideration of the sum of five thousand dollars to us paid by Martin W. Brett, James E. Brett, Elijah Houghten, and J. E. Miller, composing the firm of Brett, Son & Co., of the city of New York, the receipt whereof is hereby acknowledged, have sold and by these presents do sell, assign, transfer, and set over unto the said Martin W. Brett, James E. Brett, Elijah Houghten and J. E. Miller

207 all claim for money or damages, and all cause or causes of action held by us or existing in our favor against the said ship "Star of Hope," or the owner or owners of said ship, and all moneys due us from said ship or owners founded upon, arising from, or granting out of all or any of the transactions, facts, matters, or things set forth in said libel filed by us as aforesaid, and we hereby authorise and empower the said Martin W. Brett, James E. Brett, Elijah Houghton, and J. E. Miller, and hereby appoint them our attorneys irrevocable to conduct and prosecute the said action to final judgment or decree in their or our names, as they may deem proper, and to ask demand, recover, receive, and receipt for any and all sums of money which may finally be recovered in the action above referred to, of, or from said ship, or the owner or owners thereof, or any person or persons appearing for or intervening on behalf of ship or owners.

San Francisco, June 24, 1857.

W. C. ANNAN,
[SEAL.] By GEO. A. HAZZARD,
Att'y in fact.
[SEAL.] JAS. W. EMBURY.
[SEAL.] GEO. A. HAZZARD.

208 Endorsed: Filed July 16, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

Assignment of claim.

Whereas William C. Annan, William H. Talmage, and James W. Embury, late co-partners, doing business under the firm name of Annan, Talmage & Co., on the 20th day of March, A. D. 1857, filed their libel in the clerk's office of the District Court of the United States for the northern district of California, and instituted proceedings in said court in admiralty against the ship "Star of Hope," her owner or owners, for the purpose of recovering the sum of forty-four thousand and seven hundred dollars, which amount the said libellants claim they are entitled to recover from said ship and owners (the particulars of which claim are fully set forth in said libel,) which proceedings are still pending in said court and undetermined, and whereas the said Annan and Embury have acquired and now hold the interest in said claim represented by said Talmage.

Now, therefore, know all men by these presents, that we,
209 the said William C. Annan, by George A. Hazzard, his attorney in fact, and James W. Embury, for and in consideration of the sum of ten thousand dollars to us paid by Martin W. Brett, James E. Brett, Elijah Houghton, and J. E. Miller, composing the firm of Brett, Son & Co., of the city of New York, the receipt whereof is hereby acknowledged, have sold, and by these presents do sell, assign, transfer, and set over unto the said Martin W. Brett, James E. Brett, Elijah Houghton, and J. E. Miller, all claim for money or damages, and all cause or causes of action held by us or existing in our favor against the said ship "Star of Hope," or the owner or owners of said ship, founded upon, arising from, or growing out of all or any of the transactions, contracts, matters, or things set forth in said libel filed as aforesaid, and we hereby authorise and empower the said Martin W. Brett, James E. Brett, Elijah Houghton, and J. E. Miller, and hereby appoint and constitute them our attorneys irrevocable, to conduct and prosecute the said action to judgment or final decree in their or our names, as they may deem proper, and to ask, demand, recover, receive, and receipt for any and all sum or sums of money
210 which may finally be recovered in the action above referred to, of, or from said ship, or the owner or owners of said ship, or any person or persons appearing for or intervening on behalf of said ship as owners.

San Francisco, June 24, 1857.

W. C. ANNAN,
[SEAL.] By GEO. A. HAZZARD,
Att'y in fact.
[SEAL.] JAS. W. EMBURY.

Endorsed: Filed July 25, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

211 In the District Court of the U. States for the northern dist. Cal.—In admiralty.

Consent to entry of order for release.

In the matter of the ship "Star of Hope," and of the several suits and libels against the same.

It is agreed herein that an order for the delivery of the said "Star of Hope" to the claimant, Henry Pearsons, may be made by the hon'ble the district judge of the District Court of the United States for the northern district of California, and upon the making of such order let her be delivered accordingly by the marshal of the United States for the said district.

San Francisco, July 22nd, 1857.

J. P. HAVEN,
Proctor for certain libellants.
C. TEMPLE EMMET,
Proctor for certain other libellants.

Endorsed: Filed July 25th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

212 In the District Court of the the United States for the northern district of California.—In admiralty.

WILLIAM C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE."

JESSE SAWYER
vs.
SAME.

ADRIAN & STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

CROSBY & DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

BENJ. F. NESBITT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARK & WHITE
vs.
SAME.

BOND & HALL
vs.
SAME.

JONES & STEVENS
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

JAMES W. EMBURY *et al.*
vs.
SAME.

213 *Stipulation.*

Whereas in all the above-mentioned cases, libels were filed on divers days, between the twentieth day of March, 1857, and the twenty-third day of April, 1857, by the several libellants above-named respectively, against the ship "Star of Hope," for the reasons and causes in the said several libels respectively mentioned. And whereas the same is now in the custody of the marshal under the process issued in pursuance of the prayer of the said several libels respectively, and is of the value of forty-five thousand dollars as agreed upon between the parties, libellant and claimant; and the parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the claimant, or his sureties, execution may issue against their goods, chattels, and lands.

Now, therefore, it is hereby stipulated, for the benefit of whom it

may concern, that the stipulators, undersigned, are bound, and each of them is bound, in the amounts following, that is to say, Frederick Griffing in the sum of fifteen thousand dollars, John Sime in the sum of fifteen thousand dollars, George H. Kellogg in the sum of ten thousand dollars, Flint, Peabody & Co. in the sum of
214 thirty thousand dollars, Ira P. Rankin in the sum of ten thousand dollars, amounting in the whole to the sum of eighty thousand dollars, conditioned that they shall at any time, upon the interlocutory and final order or decree of the said District Court, or of any Appellate Court to which the above-named suits, or any of them may proceed, and upon notice of such order or decree to said claimant, or to Eugene Casserly, proctor of said claimant, pay into court the full value of forty-five thousand dollars aforesaid, [aforesaid] in the several amounts aforesaid respectively, and abide by and pay to the extent of the full value aforesaid, in the several amounts aforesaid, the money awarded by any final decree rendered by this court, or the Appellate Court, if any appeal intervene.

FRED'K GRIFFING.
JOHN SIME.
GEO. H. KELLOGG.
FLINT, PEABODY & CO.
IRA P. RANKIN.

Taken and acknowledged this 23rd day of July, A. D. 1857, before me.

JNO. A. MONROE,
U. S. Commissioner.

July 25, as to I. P. Rankin.

JNO. A. MONROE,
U. S. Commissioner.

215 Endorsed: Filed July 25th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

In the District Court of the United States for the Northern District of California.—In admiralty.

Order for release.

WILLIAM C. ANNAN, *et al.*
vs.
SHIP "STAR OF HOPE."

JESSE SAWYER
vs.
SAME.

ADRAIN & STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

CROSBY & DIBBLEE
vs.
SAME.

BENJ. F. NESBITT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARK & WHITE
vs.
SAME.

BOND & HALL
vs.
SAME.

JONES & STEVENS
vs.
SAME.

216 D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

J. Y. HALLOCK
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

JAMES W. EMBURY *et al.*
vs.
SAME.

In all the above-entitled cases, upon reading and filing the consent in writing of Joshua P. Haven and C. Temple Emmet, esqs., the proctors for the libellants, in all the above-entitled cases, in reference

to the delivery of the said ship "Star of Hope," her tackle, apparel, and furniture, and upon filing the stipulation on the part of the claimant of said ship, &c., Henry Pearson, master, for the agreed value: It is ordered that the said ship "Star of Hope," her tackle, apparel, and furniture, be released from arrest in all the above-entitled cases, and be delivered to the said claimant thereof, Henry Pearsons, he first paying into court all costs and charges of the officers of this court, so far as the same shall have accrued, to abide the decision of the court in respect thereof.

Dated this 25th day of July, A. D. 1857.

217 OGDEN HOFFMAN,
U. S. Dis't Judge.

Endorsed: Filed July 25. 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

In the District Court of the United States for the northern district of California.—In admiralty.

Order for reference.

WILLIAM C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE."

JESSE SAWYER
vs.
SAME.

ADRAIN STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

BENJ. F. NESBITT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARK & WHITE
vs.
SAME.

BOND & HALL
vs.
SAME.

218 CROSBY & DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

JONES & STEVENS
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

JAMES W. EMBURY *et al.*
vs.
SAME.

Now, at this day, all the above-entitled causes coming on to be heard, on motion of Eugene Casserly, esq., proctor of claimant therein, and the proctors of the libellants, C. Temple Emmet and J. P. Haven, esquires, asserting thereto, it is ordered that all the same be referred to William H. Chevers, esq., as a commissioner, to take and state an account and adjustment by particulars and items therein. upon the basis as contended for by the claimant in his answer, that the damage, loss, and expenses incurred by the ship "Star of Hope," from April 14, 1856, when her course was first changed, until September 11, 1856, when she resumed her voyage
219 to San Francisco, were a subject of general average and contribution upon the statement of facts as agreed on between the parties, and upon such other lawful evidence as may be offered by any party for the enabling him, the said commissioner, to ascertain and fix any amounts, sums, or values written in red, in such statement, or left in blank, and to report to this court with all convenient despatch, his report to be open to all exceptions and opposition by the parties as they shall be advised.

This order being made without prejudice to the agreements of the parties in other respects as contained in their said agreed statement, &c.

Endorsed: Filed Nov. 5, 1858. W. H. Chevers, clerk.

220 In the District Court of the United States for the northern district of California.—In admiralty.

Agreed statement of facts.

1. WILLIAM C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE."

2. JESSE SAWYER
vs.
SAME.

3. ADRAIN & STORY
vs.
SAME.

4. J. D. WING
vs.
SAME.

5. J. M. POMMARES *et al.*
vs.
SAME.

6. CROSBY & DIBBLEE
vs.
SAME.

7. D. R. PROVOST
vs.
SAME.

8. DAVID H. BURKE
vs.
SAME.

9. BENJ. F. NESBITT
vs.
SAME.

10. MOORE & FOLGER
vs.
SAME.

11. PARK & WHITE
vs.
SAME.

12. BOND & HALL
vs.
SAME.

13. JONES & STEVENS
vs.
SAME.

14. J. Y. HALLOCK *et al.*
vs.
SAME.

15. JAMES PATRICK *et al.*
vs.
SAME.

16. JAMES W. EMBURY *et al.*
vs.
SAME.

221 All and each of the libellants, in the several libels above named against the ship "Star of Hope," and also the claimant in the same, Henry Pearsons, agree that the following may be deemed and taken to be a statement of the facts in all the several cases above numbered, from one to sixteen inclusive:

Agreed statement of facts.

Charles H. Coffin and B. B. Titcomb, both of the State of Massachusetts, are the owners of the ship "Star of Hope," and the claimant, Henry Pearsons, is her master, as alleged by him in his claimand answer in all the above cases.

On or about November 20, 1855, at the city of New York, Messrs. Coffin and Titcomb demised and let said ship to Messrs. W. C. Annan, W. H. Talmage, and James W. Embury, forming the copartnership of Annan, Talmage & Co., by a contract of charter-party duly executed by all the parties, of which a copy is annexed, marked "Exhibit A," the master, officers, and crew being employed by the owners, Coffin and Titcomb.

Thereupon, Annan, Talmage & Co., as the charterers of the ship, received on board of her at New York, for delivery at San Francisco, on freight, large quantities of goods, wares, and mer-
222 chandise, the property of the other libellants, in the libels numbered from two to fifteen, both inclusive, and being of the value in each case respectively as particularly specified in the schedule annexed, marked "Exhibit B;" and also other goods, wares, and merchan-

dise, their own property, being of the value specified in the same schedule. The ship also received on board, by consent of the charterers, and on freight, payable to them for and on account of the owners, [two hundred and forty-four ½] tons of coal, of the value specified in said schedule. Among the merchandise shipped by the charterers and the other shippers, (not the owners,) were about five hundred casks and packages of brandy and other spirituous liquors, stowed next the coal, and one barrel and forty-eight kegs of gunpowder, prepared as "patent safety fusees."

With this cargo on board, the ship sailed from New York, February 10, 1856, for the port of San Francisco, being then and
223 during her entire voyage under the command of A. Somerby, as master, and being in all respects as agreed in article first of the charter-party, except as hereinafter set forth.

During the voyage, on April 14, 1856, the ship being then about latitude 46° S., longitude 53° W., the weather squally and the sea rough, great quantities of smoke and vapor were observed issuing from the fore and after hatches. After as full an examination as was possible between decks and otherwise, all on board had every reason to believe the ship on fire below, originating as was supposed in the coal by spontaneous combustion. The hatches were immediately fastened down and everything made tight, in order to check as much as possible the progress of the fire, at least until a port of succor could be reached. It was known that among the cargo were large quantities of spirituous liquors, and of the prepared gunpowder already described, all which were believed by every one on board to be highly inflammable and explosive. Great alarm was felt in consequence, and the destruction of the ship, officers, and crew was apprehended by all.

The crew refused to continue the voyage, and the captain
224 determined properly to make for the bay of San Antonio, on the southeast coast of Patagonia, as the nearest anchorage. In about four days, during which the signs of fire continued to increase, she arrived off that bay, and set the usual signal for a pilot.

In making ready the anchors and getting up the chains from below, these were found quite hot, and there were other signs of fire which greatly heightened the general alarm.

Meantime the weather was such, the wind blowing the ship right on shore, with a heavy sea running, that she could not haul off. The shore being very rocky and precipitous, she could not have gone on there without certain and almost instant loss of vessel, cargo, and all on board. The captain being very unwilling to run into a bay unknown to him without a pilot, waited about three hours for one, but none came. The place, it was evident, was a wild and desolate bay, without sign of human life. All this time the indications of fire below, as well as the weather, continued to grow worse. At length he determined, as the best thing to be done for the general safety, and especially for the preservation of the cargo and lives of
225 those on board, to make the attempt to run in without a pilot, preferring all risks to be thereby incurred rather than to re-

main outside in the momentary apprehension of destruction to all. Under all the circumstances, the captain was fully justified in this.

In attempting to enter the bay the lead was kept going, showing successively 8, 7, 6, 5, 4½, and 4 fathoms, and immediately afterwards the ship grounded, and after striking heavily remained fast. The reef or bank on which she grounded was not visible at the time, and the captain was not aware of its existence, though her stranding was one of the chief risks he had assumed in undertaking to run in. The result of the attempt was, that before the ship could be got to sea again she sprung a leak, and sustained other very serious injuries in her bottom.

These were such as to fully justify the captain in returning with her to Montevideo (as the nearest port) for examination and repairs, there being no inhabitants at San Antonio, and no sign of human life, and the water taken in by the ship having apparently extinguished the fire below.

226 He arrived at Montevideo about April 27, 1856, and on removing the cargo found marks of fire on various portions. The just and necessary expenses incurred by the ship at this port to enable her to resume her voyage, including repairs, unloading, warehousing, and reloading of cargo, &c., were [one hundred thousand dollars,] ($100,000.)

To defray these, the captain being without credit or means, either of his own or his owners, (and there being at Montevideo very little market for such goods and merchandise as the ship had aboard,) necessarily sold a considerable portion of the cargo. This sale, both as to the mode and the cargo selected, was managed with all due care for the interest of all concerned. Of the cargo thus sold some portion belonged to each of the libellants in the above libels, numbered from one to fifteen, both inclusive; the value of the portion belonging to each being as set forth in the schedule "Exhibit B," annexed.

About September 11, 1856, the ship left Montevideo, no unnecessary delay having been made there, and arrived at San Francisco on December 7, 1856.

The goods and merchandise of the several libellants remaining on board were in due time and in good order delivered to

227 them.

Upon her arrival at San Francisco the said William C. Annan and James W. Embury, and also George Hazzard, the libellants in the above libel, numbered sixteen, who had become the assignees of the said Annan, Talmage & Embury, both as to the charter-party and as to their portion of the cargo, and in all respects the successors in interest of Annan, Talmage & Embury, claimed and obtained the control of the ship and her cargo until the delivery of the latter was completed, and they alone collected and received of the several consignees the freight therefor, amounting to [thirty-seven thousand and twenty-five 65-100, ($37 025 65-100,)] dollars, or thereabouts. Messrs. Annan, Embury & Hazzard delivered to the several libellants above named the goods and merchandise of them,

the said libellants respectively, from numbers two to fifteen, both inclusive, first obtaining from them the amount of their several contributions to the general average or security therefor; and they also received so much of said cargo as was deliverable to themselves.

Of the sum of thirty-six thousand dollars, ($36,000,) the price and hire fixed in the charty-party, but [nine thousand eight hun-
228 dred twenty-two 20-100 dollars, ($9,822 20-100,)] has been paid either by the charterers or their assignees.

The expenses properly and necessarily incurred by the ship, from the day (April 14, 1856) when her course was first changed for San Antonio until the day (September 11, 1856) when she resumed her voyage from Montevideo, were about [one hundred and eight thousand one hundred and seventy-two 89-100 dollars, ($108,172 89-100.)]

The freight due at San Francisco, on the several portions of the cargo not delivered there, to the several libellants in the first fifteen of said libels respectively, was as stated in exhibit C.

The value of the ship at Montevideo was unknown, and at San Francisco forty thousand dollars. ($40,000.)

The value at San Francisco of the entire cargo shipped at New York was [one hundred and seventy-nine thousand six hundred and four 81-100 dollars, ($179,604 81-100,)] and of that portion delivered at San Francisco, [eighty-nine thousand three hundred and ninety-four 63-100 dollars, ($89,394 63-100.)]

It is further agreed by and between the said several parties, libellant and claimant, as follows:

229 That if in the opinion of the court upon the above state of facts, and upon the pleadings in the first fifteen of the said libels, a decree is proper to be rendered in favor of the libellants therein, or any of them, then in so many of such causes that a reference may be ordered by the court to , as a commissioner, with such instructions as may be necessary to take and state an account by particulars and items, and an adjustment of the expenses incurred by the ship "Star of Hope," from the day when her course was first changed, April 14, 1856, until September 10, 1856, when she resumed her voyage to San Francisco, including the wages and subsistence of the officers and crew, the value of the anchor and chain slipped, and of the anchor injured at the bay of San Antonio, the cost of repairs at Montevideo, and of unloading, warehousing, and reloading the cargo there, and all other expenses whatever; distinguishing in such adjustment what, if any, of such expenses are subject of general average, to be borne in their due proportion by the ship, freight, and cargo; and what, if any, are subject of particular average, to be borne by the ship alone—the said order of reference to contain such directions of the court to the commissioner as will
230 enable him properly so to distinguish in his said account and adjustment, and also to state the sums chargable as the proportion of the said general average upon the portions of the cargo belonging to the said several parties, libellants in each of the first fifteen of said libels respectively, and to report the same to the court.

That the sum finally found chargeable upon the portions of the cargo belonging to the said parties libellant in the first fifteen of the said libels respectively, as their respective proportions of the general average, shall be deducted from the amount, if any, found due them respectively by the said ship for their respective portions of the said cargo, sold, as above stated, at Montevideo; and if this court shall in the said fifteen libels, or any of them, decree in favor of the libellants therein, or any of them, that such decree shall be entered only for the sum, if any, remaining after such deduction made.

That from the amount, if any, found due to the libellants in the first of said libels, William C. Annan, William H. Talmage, and James W. Embury, a further deduction shall be made of the sum of [twenty-six thousand one hundred seventy-seven $\frac{80}{100}$ dollars
231 ($26,177 80,)] yet remaining due and unpaid by them by said charter-party, and also of the amount of ,

the moneys paid or secured to be paid to them by the said several consignees of the cargo of the said ship, as their proportion of the general average upon their respective portions of the said cargo, and the decree to be entered in their favors, if one shall be directed by this court, shall be only for the sum remaining after such further deduction made.

That such other and further orders and decrees in favor of the libellants, or any of them, not inconsistent with the above, may be made and entered as may be proper under the state of facts above agreed on, and the pleadings in said causes.

That except as to so much of the facts above stated as relate to the issues in cause sixteenth, above mentioned, this agreement shall be without prejudice to the rights of the parties in said cause, but shall leave them to such action therein as they shall be advised.

That in any case, if upon the above state of facts, and the pleadings in the said causes, or any of them, and the report of the commissioner as aforesaid, the claimant shall be entitled to a decree in his favor in any of the libels above mentioned, then such decree shall be ordered by the court accordingly, or such order may be made
232 by the court in favor of said claimant as shall be just in said libels, or any of them.

The exhibits B and C, as above mentioned, and the contents and particulars of each of them respectively, shall be made up by the said commissioner upon the lawful testimony, to be produced before him by the parties respectively, or he may embody the contents and substance of the same in his report in any other proper manner.

That the amounts, sums, and values written in red ink in all the foregoing statement and agreement are arbitrary, and for the purpose of a reference, and are subject to be increased, diminished, or modified by the commission upon such lawful testimony as shall be offered before him by the respective parties.

The report of the commissioner to be subject to confirmation or

otherwise by the court, and to exceptions by the parties libellant and claimant respectively, as they shall be advised.

J. P. HAVEN,
Proctor for Libellants.
C. TEMPLE EMMET,
Proctor for Libellants.
EUGENE CASSERLY,
Proctor for Cl'm'ts.

233 Endorsed: Filed November 16, 1858. W. H. Chevers, clerk.

(N. B.—The amounts included in brackets [ ] in the foregoing transcript are written in red ink in the original agreed statement.)

In the District Court of the United States for the northern district of California.—In admiralty.

Report of Commissioner W. H. Chevers.

WILLIAM C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE."

JESSE SAWYER
vs.
SAME.

ADRAIN & STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

CROSBY & DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

BENJ. F. NESBITT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARK & WHITE
vs.
SAME.

234 BOND & HALL
vs.
SAME.

JONES & STEVENS
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

JOSEPH W. EMBURY *et al.*
vs.
SAME.

I, W. H. Chevers, the commissioner appointed by an order of this court, of which a certified copy is annexed hereto, in all the above sixteen libels against the ship "Star of Hope," to take and state an account and adjustment, by particulars and items, therein upon the principles in said order set forth, having been attended by the counsel of the respective parties, and having heard and examined the matters in controversy, and also the evidence produced to me, as well on behalf of the said several libellants as on behalf of the said claimant, do report to the said District Court of the United States for the northern district of California as follows:

That schedule "A" hereto annexed, and made a part of this
235 report, is a statement by particulars and items of the disbursements of the ship "Star of Hope," at Montevideo, which disbursements were made necessary by the damage to the ship at the bay of San Antonio.

That schedule "C" is a statement of the loss sustained by the said several libellants, respectivsly, in the first fifteen of said libels, on the sale of their merchandise, at Montevideo, which sale was necessary to raise the means wherewith to defray the aforesaid disbursements.

That schedule "B," hereto annexed, and made a part of this report, contains, on pages 1 to 6 thereof, under the several heads "wages and provisions, sacrifices, claims, short deliveries, freights," a statement, by particulars, of other expenses, loss, damage, and liabilities, in addition to those specified in schedule A, incurred by the ship "Star of Hope," from April 14, 1856, when her course was first changed, until September 11, 1856, when she resumed her voyage to San Francisco. And on page 6 to 10 thereof, under the various heads therein contained, commencing with "A. H. Clark," to the end, it contains a statement of
236 expenses incurred at San Francisco, by Messrs. Annan, Embury & Co., the assignees and successors of the charterers of the ship, Messrs. Annan, Talmage & Co., and the consignees of the ship at San Francisco, in making up an account and adjustment of the loss and damage incurred in the premises by the said ship, her freight and cargo, which account and adjustment were not stated and made up on the principles indicated in the said order of reference to me, but on the principles indicated in the folio volume bound in red, and lettered on the cover "Statement of general and particular average," &c., which volume is filed herewith, and contains such account and adjustment.

The schedule "D," hereto annexed, and made a part of this report, is a statement of the contributary values, at San Francisco, of the several interests liable to contribution in the adjustment of the general average in the premises.

That the total amount of loss, expenses, damage, and liabilities incurred by reason of the deviation of the said ship from her course, from and after April 14, 1856, and of the damage sustained by her at the bay of San Antonio, including the expenses of the adjustment
237 undertaking, and made at San Francisco, by the said Annan, Embury & Co., consignees of the ship, as specified in schedule "A," "C," and "B," is one hundred and eighteen thousand four hundred and ninety-eight dollars and fifty-seven cents ($118,498 57.)

That I have not included in this report a statement of the proportionate parts this aggregate sum of $118,498 57, to be borne by the said vessel, her freight, and the said several owners of merchandise, respectively; and also of the amounts which the said several libellants, respectively, are entitled to recover from the said vessel as their respective proportions of her contributive share of the general average.

For the reason that the parties have entered into an agreement in writing, filed in this case, that at a proper time after the coming in of this report, there shall be another reference, to make up and report such a statement, and for other purposes, as by reference to such agreement on file will fully appear.

All of which is submitted.

San Francisco, February 3, 1859.

W. H. CHEVERS,
Commissioner, &c.

Endorsed: Filed February 4, 1860. W. H. Chevers.

238 In the District Court of the United States, for the northern district of California.—In Admiralty.

Stipulation regarding exhibit, &c.

WILLIAM C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE."

JESSE SAWYER
vs.
SAME.

ADRAIN & STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

CROSBY & DIBBLEE
vs.
SAME.

BOND & HALL
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

BENJ. F. NESBITT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARK & WHITE
vs.
SAME.

JONES & STEVENS
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

JAMES W. EMBURY *et al.*
vs.
SAME.

239 It is agreed on behalf both of the libellants in all the above libels, and of the claimant therein, that the folio volume, bound in red, and labelled on the cover "Statement of general and particular average," &c., referred to in the report of W. H. Chevers, esq., commissioner appointed by this court, by an order entered November fifth, 1858, to take and state an account and adjustment herein as in said order set forth, shall not be filed as in such report specified, but may be referred to by the several counsel at any time during the argument and progress of the case.

And it is further agreed, that on the hearing before the said commissioner, the counsel for the said claimant did duly object to the reception by the commissioner of all and every part of the testimony produced on behalf of the libellants, to establish the several items of charge contained in schedule "B," from page 6 to the end, commencing with the last item on page 6, (under the head "A. H. Clark,") the said items being of disbursements and expenses incurred for the adjustment and statement of average contained in the aforesaid
240 folio volume bound in red, on grounds which said counsel of claimant is at liberty to present to this court on the coming in of the report, and the argument of his oppositions and exceptions (if any) thereto.

It is also agreed and admitted, that the commissioner, in fixing the net contributary value of the said ship at thirty-three thousand four hundred and forty dollars, as appears by schedule "D," being the first item therein assumed as the basis of his valuation, the insured value of the ship, which is sixty-five thousand dollars.

It is further agreed that after the hearing of the said causes, and of the exceptions and opposition, if any, on the part both of the libellants and of the claimant, or either or any of them, to the report of the commissioner, there shall be a second reference to the same commissioner, to make up and report to this court a statement of the several sums or portions of the entire average contribution, which are due from, and to be borne by, the said vessel, her freight, and the said several owners of the cargo, respectively, and also a statement of the several amounts which the libellants, respectively,
241 are entitled to recover from the said vessel, on her contribu-

tary value, and for which a decree is to be entered up in their favor, respectively.

And also to ascertain the sum or sums to be deducted from any decree in favor of the libellants Annan, Talmage, and Embury, for moneys paid, or secured to be paid them, by the several consignees of the cargo of the said ship, as their proportions of the general average upon their respective portions of the cargo, which sum or sums, when ascertained, the commissioner will deduct from the amount of the decree in their favor, as provided in the agreed statement on file in all the above libels.

And that an order of this court, to all the foregoing effect, may be entered.

San Francisco, February 3, 1859.

C. TEMPLE EMMET,
For Libellants.
EUGENE CASSERLY,
For Claimants.
J. P. HAVEN,
For Libellants.

Endorsed: Filed Feburary 4, 1860. W. H. Chevers, clerk.

242 U. S. District Court for the northern District of California.

Exceptions of libellants to com'r's reports.

WILLIAM C. ANNAN *et al.*
vs.
THE SHIP "STAR OF HOPE," her tackle, &c.

JESSE SAWYER
vs.
THE SAME.

ADRAIN & STORY
vs.
THE SAME.

J. D. WING
vs.
THE SAME.

J. M. POMMARES *et al.*
vs.
THE SAME.

D. R. PROVOST
vs.
THE SAME.

CROSBY & DIBBLEE
vs.
THE SAME.

DAVID H. BURKE
vs.
THE SAME.

BENJ. F. HIBBERT
vs.
THE SAME.

MOORE & FOLGER
vs.
THE SAME.

PARK & WHITE
vs.
THE SAME.

BOND & HALL
vs.
THE SAME.

JONES & STEVENS
vs.
THE SAME.

JAMES PATRICK *et al.*
vs.
THE SAME.

J. Y. HALLOCK
vs.
THE SAME.

The libellants on each of the above libels except to the
243 commissioner's report, made under the order of this court entered.

First. Because the amount set forth at the foot of the 1st. 3rd, 4th, and 5th columns of schedule A, entitled "cost of coppering," "repairs to vessel," and "owners," should have been reported as a particular charge against the said ship, her tackle, &c., and not as general average against the goods, wares, and merchandise of these libellants.

Second. Because the sum of forty thousand one hundred and forty-nine dollars and seventy-three cents, being the cost of raising funds at Montevideo, for so much of the expenditure, as is a particular charge against the said ship, her tackle, &c., should have been charged

against said ship, her tackle, &c., and not as general average against the wares and merchandise of these libellants.

C. TEMPLE EMMET,
For Libellants.

Endorsed: Filed February 12, 1859. W. H. Chevers, clerk.

244 In the District Court of the United States for the northern district of California.—In admiralty.

Exceptions of claimant to com'r's report.

WILLIAM C. ANNAN *et al.*
vs.
THE SHIP "STAR OF HOPE."

JESSE SAWYER
vs.
SAME.

ADRIAN & STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES
vs.
SAME.

CROSBY & DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

BENJ. F. NESBITT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARK & WHITE
vs.
SAME.

BOND & HALL
vs.
SAME.

JONES & STEVENS
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK
vs.
SAME.

JAMES W. EMBURY *et al.*
vs.
SAME.

245 Henry Pearsons, the claimant of the said ship, "The Star of Hope," excepts to the report of William H. Chevers, esq., the commissioner herein, filed February 4, 1859, and assigns the following grounds of exceptions, namely:

First. The said commissioner, on the hearing before him, admitted testimony against the objections of the claimant to establish the several items contained in "Schedule B," of his report, from page 6 of said schedule to the end, commencing with the last item on page 6, (under the head "A. H. Clark,") and upon such testimony, allowed said items respectively.

Second. The said commissioner, in fixing the net contributary value of said ship, assumed as the basis of his valuation, the insured value of the ship, which is sixty-five thousand dollars, ($65,000,) and upon said basis fixed such contributary value at thirty-three thousand four hundred and forty dollars, ($33,440,) as appears by the first item of "Schedule D," of said report; whereas he should have assumed, as the basis of such valuation, the sum of forty thousand dollars, ($40,000,) being the value of said ship, as fixed in the agreed statement of facts filed herein.

246 Third. The said commissioner, in "Schedule A," of said report, in the third column thereof, under the heading of "repairs $\frac{1}{3}$ off for new," and in the fourth column thereof, under the heading of "repairs all," has reported all the items contained in said third column amounting in the whole to fifteen thousand seven hundred and thirty-five 79-100 dollars, ($15,735 79,) as being subject, in a certain contingency, to a deduction of one-third old for new, or for permanent benefit to the said ship; such one-third to be borne exclu-

sively by the said ship, and all the items in said fourth column amounting in the whole to three hundred and fifteen 50-100 dollars, ($315 50,) as being in the same contingency, exclusively to be borne by the said ship, or the owners thereof; whereas it does not appear that there is anything in the evidence, as to the nature of the said repairs as presented and described in said report, to authorise such a deduction or charge in any event.

San Francisco, February 14, 1859.

EUGENE CASSERLY,
For Claimant.

Endorsed: Filed February 15, 1859. W. H. Chevers, clerk.

247 District Court of the United States for the northern district of California.—In admiralty.

Decree.

WILLLIAM C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE," her tackle, &c.

JESSE SAWYER
vs.
SAME.

ADRAIN & STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs
SAME.

CROSBY & DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DANIEL H. BURKE
vs.
SAME.

BENJ. H. NESBITT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARK & WHITE
vs.
SAME.

BOND & HALL
vs.
SAME.

JONES & STEVENS
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME

JAMES PATRICK *et al.*
vs.
SAME.

JAMES W. EMBURY *et al.*
vs.
SAME.

Decree dismissed Costs

248 This cause coming on to be heard, on the exceptions taken respectively by the libellants and claimants, to the report of William H. Chevers, esq., the commissioner, to whom the same was referred on the fifth day of November, one thousand eight hundred and fifty-eight, and the advocates of the respective parties being heard, it is ordered, adjudged, and decreed, that the exceptions taken by the said libellants be sustained, and that the exceptions taken by said claimants be overruled, and it is further ordered, adjudged, and decreed, that the libellants, William C. Annan, William H. Talmage, and James W. Embury, recover against the defendant the sum of twenty-six thousand four hundred and sixty-nine dollars, ($26,469,) with costs. That the libellant, Jesse Sawyer, recover from the defendant the sum of thirteen thousand six hundred and fourteen dollars and fifty-four cents, ($13,614 54,) with costs. That the libellants, Adrain and Story, recover from the defendant the sum of three hundred and seventy-five dollars and sixty-three cents, ($375 63,) with costs. That the libellant, J. De Wing, recover from the defendant the sum of two hundred and ninety-seven dollars and ninety cents, ($297 90,) with costs. That the libellants, J. M. Pomares &

Co., recover from the defendant the sum of two hundred
249 and thirteen dollars and nine-one cents, ($213 91,) with costs. That the libellants, Crosby & Dibblee, recover from the defendant the sum of six hundred dollars and fifty-two cents, ($600 52,) with costs. That the libellant, D. R. Provost, recover from the defendant the sum of eight hundred and thirty-two dollars and eighty cents, ($832 80,) with costs. That the libellant, D. M. Burke, recover from the defendants the sum of one thousand nine hundred and forty-three dollars and ninety-eight cents, ($1,943 98,) with costs. That the libellant, B. F. Nesbitt, recover from the defendant the sum of seventy-seven dollars and cents, ($77 ,) with costs. That the libellants, Moore and Folger, recover from the defendant the sum of two hundred and thirty-two dollars and eleven cents, ($232 11,) with costs. That the libellants, Park & White, recover from the defendant the sum of two hundred and thirty-two dollars, ($232 00,) with costs. That the libellants, Bond and Hall, recover from the defendant the sum of three hundred and thirty-eight dollars and seventy-two cents, ($338 72,) with costs. That the libellants, Jones & Stevens, recover from the defendant the sum of seven hundred and twenty-two dollars and eighty-four cents,
($722 84,) with costs. That the libellants, J. Y. Hallock
250 and Co., recover from the defendant the sum of one thousand four hundred and four dollars and ninety-five cents, ($1,404 95,) with costs. That the libellants, J. Patrick & Co., from the defendant the sum of ten thousand six hundred and ninety-one dollars and thirty-eight cents, ($10,691 38,) with costs. That the libellants, J. W. Embury, William C. Annan, and George Hazzard, recover from the defendant the sum of ten thousand seven hundred and nineteen dollars and twenty-seven cents, ($10,719 27,) with costs.

And it is furthur ordered, adjudged, and decreed, that the claimant, Henry Pearsons, do forthwith pay into court, the sum of forty-five thousand dollars, being the amount of the appraised value of the said ship, "Star of Hope," delivered to him on stipulation, as in the proceedings mentioned, and unless he shall do so within ten days from the date of this decree, that a summary judgment be entered upon the stipulation aforesaid against all the parties thereto, and that execution in due form of law issue thereon.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed, August 18, 1860. W. H. Chevers, clerk.

253 District Court of the United States, northern district of California.—In admiralty.

Appeal.

WILLIAM C. ANNAN *et al*, libellants,
vs.
SHIP "STAR OF HOPE," her tackle, &c., Henry Pearsons, claimant and respondent.

JESSE SAWYER
vs.
SAME.

ADRAIN & STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al*,
vs.
SAME.

CROSBY & DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

BENJ. F. NESBITT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARK & WHITE
vs.
SAME.

BOND & HALL
vs.
SAME.

JONES & STEVENS
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

JAMES W. EMBURY *et al.*
vs.
SAME.

254 The above-named respondent conceiving himself aggrieved by the final sentence or decree entered on 18th day of August, 1860, in the above-entitled causes, doth hereby appeal therefrom and from the whole and every part thereof to the Circuit Court of the United States, to be held in and for the said district, and he prays that his appeal may be allowed and that a transcript of the record and proceedings in the said causes duly authenticated, may be sent to the said Circuit Court.

Dated San Francisco, August 28, 1860.

EUGENE CASSERLY,
Proctor for Respondent.

Endorsed: Filed August 28, 1860. W. H. Chevers, clerk.

255 In the District Court of the United States for the northern district of California.—In admiralty.

Notice of appeal.

WILLIAM C. ANNAN *et al*, libellants,
vs.
SHIP "STAR OF HOPE," her tackle, &c., Henry Pearsons, claimant and respondent.

JESSE SAWYER
vs.
SAME.

ADRAIN & STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

CROSBY & DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DANIEL H. BURKE
vs.
SAME.

BENJ. T. NESBITT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARK & WHITE
vs.
SAME.

BOND & HALL
vs.
SAME.

JONES & STEVENS
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

JAMES W. EMBURY *et al.*
vs.
SAME.

256 GENTLEMEN: You will please to take notice that the claimant and respondent in the above-entitled causes above named,

intends to appeal from the final decree of this court rendered in said causes, on the 18th day of August, A. D. 1860, and from the whole and every part of said decree.

Yours, &c.,

EUGENE CASSERLY,
Proctor for Respondent.

Dated San Francisco, August 28, 1860.
To W. H. CHEVERS, Esq.,
Clerk of said Court.

And to
J. P. HAVEN, and
C. TEMPLE EMMET, Esq'rs,
Proctors for Libellants.

Endorsed: Filed August 22, 1860. W. H. Chevers, clerk.

257 In the District Court of the United States for the northern district of California.—In admiralty.

Stipulation on appeal.

WILLIAM C. ANNAN *et al.*
vs.
THE SHIP "STAR OF HOPE," her tackle, &c.,
Henry Pearsons, claimant.

ADRAIN & STORY
vs.
THE SAME.

J. M. POMMARES *et al.*
vs.
THE SAME.

D. R. PROVOST
vs.
THE SAME.

B. F. NESBITT
vs.
THE SAME.

PARKS & WHITE
vs.
THE SAME.

JONES & STEVENS
vs.
THE SAME.

J. PATRICK *et al.*
vs.
THE SAME.

JESSE SAWYER
vs.
THE SAME.

J. D. WING
vs.
THE SAME.

CROSBY & DIBBLEE
vs.
THE SAME.

D. H. BURKE
vs.
THE SAME.

MOORE & FOLGER
vs.
THE SAME.

BOND & HALL
vs.
THE SAME.

J. Y. HALLOCK *et al.*
vs.
THE SAME.

JAMES W. EMBURY *et al.*
vs.
THE SAME.

258 Whereas an appeal has been taken from the decree of this court, made on 18th day of August, 1860, in certain causes wherein all the above-named persons are libellants against the said ship "Star of Hope," her tackle, &c., and Henry Pearsons is claimant by the said claimant.

Now, therefore, the stipulators undersigned hereby stipulate in the sum of five hundred dollars, to pay all damages and costs which shall be awarded against the said appellant by the final decree rendered by the Appellate Court.

EDW'D P. FLINT.
GEO. H. KELLOGG.

Taken and acknowledged, this fifth day of September, 1860, before me.

W. H. CHEVERS, *U. S. Com.*

NORTHERN DISTRICT OF CALIFORNIA, *ss*:

Edward P. Flint and George H. Kellogg, parties to the above stipulation, being each duly sworn, say, and each of them says, that he

is worth the sum of five hundred dollars over and above all his just debts and liabilities.

EDW'D P. FLINT.
GEO. H. KELLOGG.

259 Subscribed and sworn to, this fifth day of September, 1860, before me.

W. H. CHEVERS, *U. S. Com.*

The within stipulation is approved by us.
September ——, 1860.

J. P. HAVEN,
C. TEMPLE EMMET,
Proctors and Advocates.

Endorsed: Filed September 5, 1860. W. H. Chevers, clerk.

260 Circuit Court of the United States for the district of California, in and for the northern district.—In admiralty.

Petition of appeal.

1. THE SHIP "STAR OF HOPE," her tackle, apparel, and furniture, &c., Henry Pearsons, claimant of the said ship "Star of Hope," her tackle, &c., and appellant,
vs.
WM. C. ANNAN, W. H. TALMAGE, and James W. Embury, libellants and appellants.

2. SAME APPELLANT
v.
JESSE SAWYER, appellee.

3. SAME APPELLANT
v.
ADRAIN STORY, appellees.

4. SAME APPELLANT
v.
J. D. WING, appellee.

5. SAME APPELLANT
vs.
J. M. POMMARES & Co., appellees.

6. SAME APPELLANT
vs.
CROSBY & DIBBLEE, appellees.

7. SAME APPELLANT
v.
D. R. PROVOST, appellee.

8. SAME APPELLANT
vs.
DAVID H. BURKE, appellee.

9. SAME APPELLANT
vs.
BENJ. F. NESBITT, appellee.

261 10. SAME APPELLANT
v.
MOORE & FOLGER, appellees.

11. SAME APPELLANT
vs.
PARK & WHITE, appellees.

12. SAME APPELLANT
vs.
BOND & HALL, appellees.

13. SAME APPELLANT
v.
JONES & STEVENS, appellees.

14. SAME APPELLANT
v.
J. Y. HALLOCK & Co., appellees.

SAME APPELLANT
v.
JAMES PATRICK & Co., appellees.

SAME APPELLANT
vs.
JAMES W. EMBURY, WM. C. ANNAN, and George Hazzard, appellees.

To the honorable the Circuit Court of the United States for the district of California, in and for the northern district:

The petition of appeal of the above-named appellant, Henry Pearsons, respectfully showeth, that on or about the 21st day of March, 1857, the above-named libellants, Wm. C. Annan, Wm. H. Talmage, and James W. Embury, exhibited their libel in the District Court of the United States for the northern district of California,
262 against the aforesaid ship "Star of Hope," her tackle, apparel, and furniture, claiming over fifty dollars ($50)—namely, the sum of ($44,700,) forty-four thousand seven hundred dollars damages, alleged to have been sustained by them for an alleged breach of contract of affreighment by reason of non-delivery of certain goods, &c., praying, among other things, for the reasons set forth in their libel, that process in due form of law, &c., issue against said ship, her tackle, &c., and that the said District Court would be pleased to decree the payment of the demands of said libellant in said libel mentioned, with costs, and for such other and relief as in law and justice they might be entitled to receive.

That process in due form of law and according to the course of said District Court, in cases of admiralty and maritime jurisdiction, issued against said ship, her tackle, &c., and the same were thereby attached.

That afterwards, on the 30 day of March, 1857, the above-named libellants, Jesse Sawyer, Benj. F. Nesbitt, Adrain & Story, Moore & Folger, J. D. Wing, Park & White, J. M. Pommares & Co., Bond & Hall, Crosby & Dibblee, Jones & Stevens, D. R.
263 Provost, J. Y. Hallock & Co., David H. Burke, and James Patrick & Co., exhibited their several respective libels in the said District Court against the ship "Star of Hope," her tackle, &c., severally claiming over fifty dollars, ($50,) namely, the said Sawyer the sum of thirty one thousand eight hundred and ninety-four dollars and seventy-four cents, ($31,894 74,) the said Nesbitt the sum of two hundred and sixty dollars, ($260,) the said Adrain & Story the sum of three hundred and twenty-five dollars, ($325,) the said Moore & Folger the sum of five hundred and ten dollars, ($510,) the said Wing the sum of four hundred and ninety-six dollars and fifty cents, ($496 50,) the said Park & White the sum of three hundred and fifty-two dollars, ($352,) the said J. M. Pommares & Co. the sum of three hundred and twenty-six dollars and twenty-five cents, ($326 25,) the said Bond & Hall the sum of five hundred and eleven dollars and five cents, ($511 05,) the said Crosby & Dibblee the sum of nine hundred and ninety-nine dollars and fifty cents, ($999 50,) the said Jones & Stevens the sum of eleven hundred and twenty-one dollars and ninety-five cents ($1,121 95,) the said Provost the sum of two thousand one hundred and ninety-six dollars, ($2,196,) the said J. Y.
264 Hallock & Co. the sum of two thousand three hundred and thirty-eight dollars, ($2,338,) the said Burke the sum of two thousand eight hundred and eighty-seven dollars and fifty cents, ($2,887 50,) and the said James Patrick & Co. the sum of sixteen thousand three hundred and twenty-six dollars and seventy-seven cents, ($16,326 77,) damages alleged to have been by them severally sustained for alleged breaches of a contract of affreightment, by reason of non-delivery of certain goods, &c., respectively praying, among other things, for the reasons in said libels respectively set forth, that process in due form of law, &c., issue against the said ship, her tackle, &c.; and that the said District Court would be pleased to decree the payment of the several and respective demands of the said several libellants in their said libels respectively set forth, with costs, and such further and other relief as in law and justice they might respectively be entitled to receive.

That process in due form of law, and according to the course of said District Court in cases of admiralty and maritime jurisdiction, issued against said ship, her tackle, &c., in each of said causes, and the same were thereby attached.

265 That afterwards, on the 14th day of April, 1857, by the order of said court, duly made on that day, the respondent, Henry Pearsons, as hereinafter mentioned, had leave to file one general answer to all the aforesaid libels; and on the 18th day of April,

1857, this appellant, the said Henry Pearsons, the respondent, filed his claim and answer to all the said libels in the said District Court, claiming the said ship, &c., as the master, and lawful bailee thereof of Charles H. Coffin and B. B. Titcomb, the true bona fide and sole owners of said ship, and praying that the said District Court would be pleased to pronounce against the said several libels, and each of them respectively, and to decree a restitution of the said ship to him, the said respondent, and otherwise right and justice to administer in the premises as by reference to the said several libels, process, order, claim, and answer may more fully appear.

That afterwards, on the 22nd day of April, 1857, the above-named libellants, James W. Embury, Wm. C. Annan, and George Hazzard, exhibited their libel against the said ship, her tackle, &c., in the said District Court, claiming over fifty dollars, namely, the
266 sum of ($10,000) ten thousand dollars, or thereabouts, for services alleged to have been rendered by them in relation to said ship, as consignee, &c., and on liabilities alleged to have been by them incurred as such on her account, for an alleged adjustment of average, and otherwise praying, among other things, for the reasons in said libel set forth, that process issue in due form of law, &c., against the said ship, her tackle, &c., her freight, &c., and that the said court would be pleased to decree the payment of the demands of said libellants, in their said libel set forth, and costs, and that they have such other and further relief as in law and justice they might be entitled to receive.

That process in due form of law, and according to the course of said District Court in cases of admiralty and maritime jurisdiction, having been issued in said cause against the said ship, her tackle, &c., and the same having been thereby attached, this appellant, the said Henry Pearsons, on the 8th day of May, 1857, filed his plea and exception to the sufficiency of [of] said libel, that the matters in said libel propounded do not constitute a cause of contract, civil and maritime, within the jurisdiction of said court, and his claim and answer to the said libel in said District Court, claiming the said ship
267 as the master and lawful bailee thereof of the said Charles H. Coffin and B. B. Titcomb, the true and bona fide and only owners of said ship, and praying, among other things, that the said court would pronounce against the said libel, and condemn the said libellants in costs, and otherwise right and justice would administer in the premises.

That the said causes, on or about November 5, 1858, came on to be heard before the Hon. Ogden Hoffman, judge of said district court, upon the statement of facts, as agreed on between the parties filed in said causes, and then and there an order was, by consent of all the parties, made on that day directing a reference to W. H. Chevers, esq., as a special commissioner, to take and state an account by particulars upon the basis, as contended for by the claimant in his answers, that the damage, loss, and expenses incurred by the said ship from April 14, 1856, when her course was first changed, until September 11, 1856, when she resumed her voyage to San Francisco,

were a subject of general average and contribution upon the said agreed statement of facts, and upon such other lawful evidence as might be offered by any of the parties, for enabling him, said
268 commissioner, to ascertain the amounts, sums, or values written in red or left in blank in said statement, and to report to the said court with all convenient despatch, his report to be open to all exceptions and opposition by the parties as advised.

The said order being made without prejudice to the agreements of the parties in other respects, as contained in their said agreed statement.

And the said commissioner, having heard and examined the matters referred to him, and also the evidence produced to him, as well on behalf of the said several libellants as on behalf of the said claimant, filed his report on the 4th day of February, 1859, to which report exceptions were taken, and filed both by the libellants in the said causes and by the said claimant, as by reference to said exceptions will more fully and at large appear.

That afterwards, on various days between the 23rd day of February, and the 16th day of April, A. D. 1859, the said causes came on to be heard before the said judge upon the proof therein, including the said agreed statement of facts, and in the exceptions taken
269 respectively by the libellants and the claimant to the said report of the said commissioner, and on the said report, and the said judge having advised thereon on the 18th day of August, 1860, made a decree and final sentence in said causes, whereby it was, amongst other things, sentenced and decreed that the exceptions to said report taken by the said libellants be sustained, and that the exceptions taken by said claimant be overruled, and it was further decreed that the said libellants, Wm. C. Annan, W. H. Talmage, and James W. Embury, recover against the defendant the sum of twenty-six thousand eight hundred and sixty-nine dollars, ($26,469,) with costs.

That the said libellant, Jesse Sawyer, recover from the defendant the sum of thirteen thousand six hundred and fourteen dollars and fifty-four cents, ($13,614 54,) with costs.

That the said libellants, Adrain & Story recover from the defendant the sum of three hundred and seventy-five dollars and sixty-three cents, ($375 63-100,) with costs.

That the said libellants, J. D. Wing, recover from the defendant the sum of two hundred and ninety-seven dollars and ninety cents, ($297 90,) with costs.

270 That said libellants, J. M. Pommares & Co., recover from the defendant the sum of two hundred and thirteen dollars and ninety-one cents, ($213 91,) with costs.

That the said libellants, Crosby, & Dibblee recover from the defendant the sum of six hundred dollars and fifty-two cents, ($600 52,) with costs.

That the said libellants, D. R. Provost, recover from the defendant the sum of eight hundred and thirty-two dollars and eighty cents, ($832 80,) with costs.

That the said libellants, D. H. Burke, recover from the defendant the sum of one thousand nine hundred and forty-three dollars and ninety-eight cents, ($1,943 98,) with costs.

That the said libellant, B. F. Nesbitt, recover from the defendant the sum of seventy-seven dollars and cents, ($377 ,) with costs.

That the said libellants, Moore & Folger, recover from the defendant the sum of two hundred and thirty-two dollars and eleven cents, ($232 11,) with costs.

That the said libellants, Park & White, recover from the defendant the sum of two hundred and thirty-two dollars, ($232 00,) with costs.

271 That the said libellants, Bond & Hall, recover from the defendant the sum of three hundred and thirty-eight dollars and seventy-two cents, ($338 72,) with costs.

That the said libellants, Jones and Stevens, recover from the defendant the sum of seven hundred and twenty-two dollars and eighty-four cents, ($722 84,) with costs.

That the said libellants, J. Y. Hallock & Co., recover from the defendant the sum of one thousand four hundred and four dollars and ninety-five cents, ($1,404 95,) with costs.

That the said libellants, J. Patrick & Co., recover from the defendant the sum of ten thousand six hundred and ninety-one dollars and thirty-eight cents, ($10,691 38,) with costs.

That the said libellants, J. W. Embury, William C. Annan, and George Hazzard, recover from the defendant the sum of ten thousand seven hundred and nineteen dollars and twenty-seven cents, ($10,719 27.)

And this appellant is advised and insists that the said decree is erroneous, inasmuch as the exceptions to the said report, taken by the said libellants, should have been overruled, and the excep-

272 tions thereto taken by the claimant should have been sustained, and inasmuch as the damages claimed by the said several libellants respectively, in the cases numbered above, from one to fifteen (1–15) inclusive, were and by right should have been a subject of general average and contribution, to be borne by the said ship "Star of Hope," her freight, and her cargo, and the owners thereof, in their just proportions respectively, and not of particular average to be borne by the said ship, as by the said decree of said District Court was determined and adjudged; and inasmuch as the said ship was not liable to the said several libellants, in any of the sixteen libels above mentioned respectively, for the sums of money in their said several libels claimed, and in the said decree to them awarded, and decreed respectively, or any part thereof, and inasmuch as the matters, in the last of said several libels, number 16 above propounded and alleged, do not constitute a cause of contract, civil and maritime, within the jurisdiction of said District Court.

And this appellant, for these and other reasons, appeals from the whole and every part of said decree to the next Circuit Court,

273 to be held in said district, and on the said appeal he intends to have the said causes heard anew, on the pleadings and

proofs, in the District Court, and other proofs to be introduced in the said Circuit Court, and to seek a new decision on the facts.

And he prays that the record and proceedings may be returned to the said Circuit Court, and that the said decree, and every part thereof, may be reversed, or such other decree thereon be made, as to said Circuit Court shall seem just; and that the appellees may be condemned to pay to the appellant his costs and damages in the premises.

EUGENE CASSERLY,
Claim'ts Proctor.
D. LAKE, *Advocate.*

We hereby admit due personal service on us respectively of a copy of the within appeal, this 29th day of September, A. D. 1860.

C. TEMPLE EMMET,
J. P. HAVEN,
P'r C. TEMPLE EMMET,
Proctors for Libellants.

Endorsed: Filed Septemb. 29, 1860. W. H. Chevers, clerk.

274 *Clerk's certificate.*

I, W. H. Chevers, clerk of the District Court of the United States for the northern district of California, do hereby certify the foregoing pages, numbered from 1 to 278, both inclusive, together with the exhibit hereto attached, to be a transcript of the record of the said District Court, in the cause named at the beginning hereof, made up pursuant to admiralty rule No. 53, December term, 1854, of the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 11th day of December, in the year of our Lord one thousand eight hundred and sixty, and of our independence the 85th.

[SEAL] W. H. CHEVERS,
Clerk.

275 U. S. district court, northern district of California.

Statement of costs.

W. C. ANNAN *et al*, and the various suits,
vs.
THE SHIP "STAR OF HOPE."

Statement of costs in District Court.

1857. July 27.	Clerk's costs	$520	00
	Marshal's costs	703	80
1860. Sep. 29.	Referee's costs, making statement, general average, etc	2,067	02
	Balance, marshal's costs	16	00
	Clerk's cost on appeal	180	30
	Com'rs " " "	3	30
		3,490	42

I, W. H. Chevers, clerk of said court, do hereby certify the foregoing to be an accurate statement of all the costs which have accrued in the above causes in this court; and I further certify that they have been paid, in full, by Messrs. Flint, Peabody & Co.

[SEAL.] W. H. CHEVERS, *Clerk.*

Endorsed: Filed December 14, 1860. Cutler McAlister, clerk.

276 Circuit Court of the United States for the northern district of California, in and for the northern district.—In admiralty.

Petition of Appeal.

THE SHIP "STAR OF HOPE," her tackle, apparel, and furniture, &c., Henry Pearsons claimant of the said ship "Star of Hope," her tackle, &c., and appellant,
vs.
W. C. ANNAN, WM. A. TALMAGE, and J. W. Embury, libellants and appellees.

2. SAME APPELLANT,
vs.
JESSE SAWYER, appellee.

3. SAME APPELLANT
vs.
ADRAIN & STORY, appellees.

4. SAME APPELLANTS
vs.
J. D. WING, appellee.

6. SAME APPELLANT
vs.
CROSBY & DIBBLEE, appellants.

7. SAME APPELLANT
vs.
D. R. PROVOST, appellee.

8. SAME APPELLANT
vs.
DAVID H. BURKE, appellee.

277 5. SAME APPELLANT
vs.
J. M. POMMARES & CO., appellees.

9. SAME APPELLANT
vs.
BENJ. F. NESBITT, appellee.

10. SAME APPELLANT
vs.
MOORE & FOLGER, appellees.

11. SAME APPELLANT
vs.
PARK & WHITE, appellees.

12. SAME APPELLANT
vs.
BOND & HALL, appellees.

13. SAME APPELLANT
vs.
JONES & STEVENS, appellees.

14. SAME APPELLANT
vs.
J. Y. HALLOCK & Co., appellees.

15. SAME APPELLANT
vs.
JAMES PATRICK & Co., appellees.

16. SAME APPELLANT
vs.
JAMES W. EMBURY and GEORGE Hazzard, appellees.

To the honorable the Circuit Court of the United States for the district twenty of California, in and for the northern district:

The petition of appeal of the above-named appellant, Henry Pearsons, respectfully showeth, that on or about the 21st day of
278 March, 1857, the above-named libellants, W. C. Annan, Wm. A. Talmage, and James W. Embury, exhibited their libel in the District Court of the United States for the northern district of California against the aforesaid ship "Star of Hope," her tackle, apparel, and furniture, claiming over fifty dollars, ($50.) namely the sum of ($44,700,) forty-four thousand seven hundred dollars damages, alleged to have been sustained by them for an alleged breach of contract of affreightment by reason of non-delivery of certain goods, &c., praying among other things, for the reasons set forth in their libel, that process in due form of law, &c., issue against said ship, her tackle, &c., and that the said District Court would be pleased to decree the payment of the demands of said libellants in said libel mentioned, with costs, and for such other and further relief as in law and justice they may be entitled to receive.

That process, in due form of law and according to the course of said district court in cases of admiralty and maritime jurisdiction, issued against said ship, her tackle, &c., and the same were thereby attached.

279 That afterwards, on the 30th day of March, 1857, the above-named libellants, Jesse Sawyer, Benj. F. Nesbitt, Adrain & Story, Moore & Folger, J. D. Wing, Park & White, J. D. Pommares & Co., Bond & Hall, Crosby & Dibblee, Jones & Stevens, D. R. Provost, J. Y. Hallock & Co., David H. Burke, and James Patrick & Co., exhibited their several respective libels in the said District Court against the said ship Star of Hope, her tackle, &c., severally claiming over fifty dollars, ($50,) name the said Sawyer the sum of thirty one thousand eight hundred and ninety-four dollars and seventy-four cents, ($31,894 74,) the said Nesbitt the said sum of two hundred and sixty dollars, ($260,) the said Adrain & Story the sum of three hundred and twenty-five dollars, ($325;) the said Moore & Folger the sum of five hundred and ten dol-dollars, ($510;) the said Wing the sum of four hundred and ninety-six dollars and fifty cents, ($496 50;) the said Park & White the sum of three hundred and fifty-two dollars, ($352;) the said J. M. Pommares & Co. the sum of three hundred and twenty-six dollars and twenty-five cents, ($326 25;) the said Bond & Hall the sum of five hundred and eleven dollars and five cents, ($511 05;) the said Crosby & Dibblee the sum of nine hundred
280 and ninety-nine dollars and fifty cents, ($999 50;) the said Jones & Stevens the sum of eleven hundred and twenty-one dollars and ninety-five cents, ($1,121 95;) the said Provost the sum of two thousand one hundred and ninety-six dollars ($2,196;) the said J. Y. Hallock and Co. the sum of two thousand three hundred and thirty-eight dollars, ($2,338;) the said Burke the sum of two thousand eight hundred and eighty-seven dollars and fifty cents, ($2,887 50;) and the said James Patrick & Co. the sum of sixteen thousand three hundred and twenty-six dollars and seventy-seven cents ($16,326 77) damages, alleged to have been by them severally sustained for alleged breaches of contracts of affreightment, by reason of non-delivery of certain goods, and c, respectively praying, among other things, for the reasons in said libels respectively set forth, that process in due form of law, &c., issue against the said ship, her tackle, &c , and that the said District Court would be pleased to decree the payment of the several and respective demands of the said several libellants in their said libels respectively set forth, with costs, and such further and other relief as in law and justice they might respectively be entitled to receive. That process, in due form of law, and according to the course of said District Court
281 in cases of admiralty and maritime jurisdiction, issued against said ship, her tackle, &c., in each of said causes, and the same were thereby attached.

That afterwards, on the fourteenth day of April, 1857, by the order of said court, duly made on that day, Henry Pearsons, as the respondent hereinafter mentioned. had leave to file one general answer to all the aforesaid libels, and on the 18th day of April, 1857, this appellant, the said Henry Pearsons, the respondent, filed his claim and answer to all the said libels in the said District Court, claiming the said ship, &c., as the master and lawful bailee thereof of Charles

H. Coffin and B. B. Titcomb, the true bona fide and sole owners of said ship, and praying that the said District Court would be pleased to pronounce against the said several libels, and each of them respectively, and to decree a restitution of the said ship to him, the said respondent, and otherwise right and justice to administer in the premises; as by reference to the said several libels, process, order, claim, and answer may more fully appear.

282 That afterwards, on the 22nd day of April, 1857, the above-named libellants, James W. Embury, Wm. C. Annan, and George Hazzard, exhibited their libel against the said ship, her tackle, &c., in the said District Court, claiming over fifty dollars, namely, the sum of ($10,000) ten thousand dollars, or thereabouts, for services alleged to have been rendered by them in relation to said ship as consignees, &c., and liabilities alleged to have been by them incurred as such on her account, for an alleged adjustment of average, and otherwise praying, among other things, for the reasons in said libel set forth, that process issue in due form of law, &c., against the said ship, her tackle, &c., her freight, &c., and that the said court would be pleased to decree the payment of the demands of said libellants in their said libel set forth, and costs, and that they have such other and further relief as in law and justice they might be entitled to receive. That process, in due form of law, and according to the course of said District Court in cases of admiralty and maritime jurisdiction, having been issued in said cause against the said ship, her tackle, &c., and the same having been thereby attached,

283 this appellant, the said Henry Pearsons, on the 8th day of May, 1857, filed his plea and exception to the sufficiency of said libel; that the matters in said libel propounded do not constitute a cause of contract, civil and maritime, within the jurisdiction of said court, and his claim and answer to the said libel in the said District Court, claiming the said ship as the master and lawful bailee thereof of the said Charles H. Coffin and B. B. Titcomb, the true and bona fide and only owners of said ship, and praying, among other things, that the said court would pronounce against the said libel, and condemn the said libellants in costs and otherwise right and justice would administer in the premises.

That the said causes, on or about November 5th, 1858, came on to be heard before the Hon. Ogden Hoffman, judge of said District Court, upon the statement of facts as agreed on between the parties filed in said causes, and then and there an order was by consent of all parties made on that day directing a reference to W. H. Chevers, esq., as a special commissioner, to take and state an account by particulars upon the basis as contended for by the claimant in his answers that the damage, loss, and expense incurred by the said ship

284 from April 14, 1856, when her course was first changed, until September 11th, 1856, when she resumed her voyage to San Francisco, were a subject of general average and contribution upon the said agreed statement of facts and upon such other lawful evidence as might be offered by any of the parties for enabling him, said commissioner, to ascertain the amounts, sums, or values written in red or

left in blank in said statement, and to report to the said court with all convenient despatch, his report to be open to all exceptions and opposition by the parties as advised. The said order being made without prejudice to the agreements of the parties in other respects, as contained in their said agreed statement.

And the said commissioner having heard and examined the matters referred to him and also the evidence produced to him as well on behalf of the said several libellants as on behalf of the said claimant, filed his report on the 4th day of February, 1859, to which report exceptions were taken and filed both by the libellants in said causes and by the said claimant; as by reference to said exceptions will more fully and at large appear.

285 That afterwards, on various days, between the 23rd of February, and the 16th of April, A. D. 1859, the said causes came on to be heard before the said judge upon the proofs therein, including the said agreed statement of facts, and on the exceptions taken respectively by the libellants and the claimant to the said report of the said commissioner, and on the said report, and the said judge having advised thereon, on the 18th day of August, 1860, made a decree and final sentence in said causes, whereby it was, amongst other things, sentenced and decreed that the exceptions to said report taken by the said libellants be sustained and that the exceptions taken by the said claimant be overruled; and it was further decreed that the said libellants, Wm. C. Annan, W. H. Talmage, and James W. Embury, recover against the defendant the sum of twenty-six thousand four hundred and sixty-nine dollars, ($26,469,) with costs.

That the said libellant, Jesse Sawyer, recover from the defendant the sum of thirteen thousand six hundred and fourteen dollars and fifty-four cents, ($13,614 54,) with costs.

That the said libellants, Adrain & Story, recover from the defendant the sum of three hundred and seventy-five dollars and

286 sixty-three cents, ($375 63,) with costs.

That the said libellant, J. D. Wing, recover from the defendant the sum of two hundred and ninety-seven dollars and ninety cents, ($297 90,) with costs.

That the said libellants, J. M. Pommares & Co., recover from the defendant the sum of two hundred and thirteen dollars and ninety-one cents, ($213 91,) with costs.

That the said libellants, Crosby and Dibblee, recover from the defendant the sum of six hundred dollars and fifty-two cents, ($600 52,) with costs.

That the said libellant, D. R. Provost, recover from the defendant the sum of eight hundred and thirty-two dollars and eighty cents, ($832 80,) with costs.

That the said libellant, D. A. Burke, recover from the defendant the sum of one thousand nine hundred and forty-three dollars and ninety-eight cents, ($1,943 98,) with costs.

That the said libellant, B. F. Nesbitt, recover from the defendant the sum of seventy-seven dollars and cents, ($77 ,) with costs.

That the said libellants, Moore & Folger, recover from the defendant the sum of two hundred and thirty-two dollars and eleven cents, ($232 11,) with costs.

287 That the said libellants, Park & White, recover from the defendant the sum of two hundred and thirty-two dollars ($232), with costs.

That the said libellants, Bond & Hall, recover from the defendant the sum of three hundred and thirty-eight dollars and seventy-two cents ($338 72), with costs.

That the said libellants, Jones & Stevens, recover from the defendant the sum of seven hundred and twenty-two dollars and eighty-four cents ($722 84), with costs.

That the said libellants, J. Y. Hallock & Co., recover from the defendant the sum of one thousand four hundred and four dollars and ninety-five cents ($1,404 95), with costs.

That the said libellants J. Patrick & Co., recover from the defendant the sum of ten thousand six hundred and ninety-one dollars and thirty-eight cents ($10,691 38).

That the said libellants, J. W. Embury, William C. Annan, and George Hazzard, recover from the defendant the sum of ten thousand seven hundred and nineteen dollars and twenty-seven cents ($10,719 27), with costs.

And this appellant is advised and insists, that the said decree is erroneous, inasmuch as the exceptions to the said report,

288 taken by the said libellants, should have been overruled, and the exceptions thereto, taken by the claimant, should have been sustained; and inasmuch as the damages claimed by the said libellants, respectively, in the cases numbered above, from one to fifteen (1 to 15), inclusive, were, and by right should have been, a subject of general average and contribution, to be borne by the said ship "Star of Hope," her freight and her cargo, and the owners thereof, in their just proportions, respectively, and not of particular average, to be borne by the said ship, as by the said decree of said District Court was determined and adjudged; and inasmuch as the said ship was not liable to the said several libellants in any of the sixteen libels above mentioned, respectively, for the sums of money in their said several libels claimed, and in the said decree to them awarded and decreed, respectively, or any part thereof; and inasmuch as the matters in the last of said several libels, numbered sixteen, above propounded and alleged, do not constitute a cause of contract, civil and maritime, within the jurisdiction of said District Court.

And this appellant, for these and other reasons, appeals

289 from the whole and every part of said decree, to the next Circuit Court, to be held in said district, and on the said appeal he intends to have the said causes heard anew, on the pleadings and proofs in the District Court, and other proofs to be introduced in the said Circuit Court, and to seek a new decision on the facts.

And he prays that the record and proceedings may be returned to the said Circuit Court, and that the said decree, and every part

thereof, may be reversed, or such other decree thereon be made, as to said Circuit Court shall seem just, and that the appellees may be condemned to pay to the appellant his costs and damages in the premises.

EUGENE CASSERLY,
Claimants' Proctor.
D. LAKE, *Advocate.*

Endorsed: Filed Sept'r 29, 1860. W. H. Chevers. Filed Dec. 14, 1860. Cutler McAllister.

We hereby admit due personal service on us, respectively, of a copy of the within appeal, this 29th day of September, A. D. 1860.

C. TEMPLE EMMET.
J. P. HAVEN,
Per C. TEMPLE EMMET,
Proctors for Libellants.

290 Circuit Court of the United States for the district of California.

Notice of appearance of appellees.

SHIP "STAR OF HOPE," her tackle, apparel, and furniture, Henry Pearsons, claimant, appellant,
vs.
WILLIAM C. ANNAN, WILLIAM H. TALMAGE, and James W. Embury, libellants and appellees.

SAME APPELLANT
vs.
JESSE SAWYER, appellee.

SAME APPELLANT
vs.
ADRAIN & STORY, appellees.

SAME APPELLANT
vs.
J. D. WING, appellee.

SAME APPELLANT
vs.
J. M. POMARES & Co., appellees.

SAME APPELLVNT
vs.
CROSBY & DIBBLEE, appellees.

SAME APPELLANT
vs.
D. R. PROVOST, appellee.

SAME APPELLANT
vs.
DAVID H. BURKE, appellee.

SAME APPELLANT
vs.
BENJ. F. NESBITT, appellee.

291 SAME APPELLANT
vs.
MOORE & FOLGER, appellees.

SAME APPELLANT
vs.
PARK & WHITE, appellees.

SAME APPELLANT
vs.
BOND & HALL, appellees.

SAME APPELLANT
vs.
JONES & STEVENS, appellees.

SAME APPELLANT
vs.
J. Y. HALLOCK & Co., appellees.

SAME APPELLANT
vs.
JAMES PATRICK & Co., appellees.

SAME APPELLANT
vs.
JAMES W. EMBURY, WILLIAM C. Annan, and George Hazzard, appellees.

SIR: You will please to enter my appearance for the appellee in all the above causes.

San Francisco, Jan'y 7, 1861.

To CUTLER MCALISTER, Esq.,
Clerk of Circuit Court.

Endorsed: Filed Jan'y 7, 1861. Custer McAlister, clerk.

292 In the Circuit Court of the United States for the northern district of California.—In admiralty.

Agreement.

WILLIAM C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE."

JESSE SAWYER
vs.
SAME.

ADRAIN & STORY.
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

CROSBY & DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

BENJ. F. NESBIT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARKE & WHITE
vs.
SAME.

BOND & HALL
vs.
SAME.

JONES & STEVENS
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

JAMES W. EMBURY *et al.*
vs.
SAME.

293 Whereas, on or about the 23rd day of July, A. D. 1857, the said ship "Star of Hope," being in custody of the marshal, under process issued in pursuance of the prayer of the several libels filed by the several libellants above named against said ship, Frederick Griffing, John Sime, George H. Kellogg, Flint, Peabody & Co., and Ira P. Rankin on that day entered into a stipulation, afterwards on the 25th day of July, A. D. 1857, filed in this court, for her agreed value, namely, forty-five thousand dollars.

And whereas it had been agreed between the parties, libellant in the above entitled cases, the assignees of such of them as have assigned their claims, and the said stipulators in the said stipulation, that Frederick Griffing, one of said stipulators, be released and discharged from said stipulation, and that William A. Dana and Alfred L. Tubbs be substituted as stipulators in lieu of said Frederick Griffing in the same amount together, to wit, the sum of fifteen thousand dollars, for which the said Frederick Griffing therein stipulated; and whereas in pursuance of such agreement, the said William A. Dana and Alfred L. Tubbs have this day executed a new stipulation
294 in the said cases in the sum of fifteen thousand dollars.

Now, therefore, we, the undersigned parties, libellant or their assigns, by our proctor in all the said cases, C. T. Emmet, esq., do hereby release and forever discharge the said Frederick Griffing from the aforesaid stipulation and from all liability or responsibility whatsoever thereon, and do hereby accept the said William A. Dana and Alfred L. Tubbs as stipulators, in lieu of the said Frederick Griffing, in the same amount together for which the said Frederick Griffing, therein stipulated.

And we, the undersigned, the other stipulators in said stipulation, in consideration of such release, do hereby consent to the aforesaid release and discharge of the said Frederick Griffing from the said

stipulation, and to the substitution in his place of the said William A. Dana and Alfred L. Tubbs as stipulators as aforesaid, and that such release and stipulation shall not in any wise affect our or any of our liabilities or responsibility upon such stipulation.

Dated San Francisco, Jan'y 16, 1867.

JOHN SIME,
Surety on said original stipulation.
C. TEMPLE EMMET,
Proctor for Libellants in all above cases.

295 GEORGE H. KELLOGG,
Surety on said original stipulation.
FLINT, PEABODY & Co.,
Sureties on said original stipulation.
IRA P. RANKIN,
Surety on said original stipulation.

Endorsed: Filed Jan'y 19, 1861. Cutler McAllister, clerk.

296 In the Circuit Court of the United States for the districts of California in and for the northern district.—In admiralty.

Stipulation.

WILLIAM C. ANNAN *et al.*
vs.
SHIP "STAR OF HOPE."

JESSE SAWYER
vs.
SAME.

ADRAIN & STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

CROSBY & DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

BENJ. F. NESBIT
vs.
SAME.

MOORE & FOLGER
vs.
SAME.

PARK & WHITE
vs.
SAME.

BOND & HALL
vs.
SAME.

JONES & STEVENS
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

297 JAMES W. EMBURY *et al.*
vs.
SAME.

Whereas in all the above-mentioned cases libels were filed in the District Court of the United States for the northern district of California on divers days between the twentieth day of March, 1857, and the twenty-third day of April, 1857, by the several libellants above-mentioned respectively against the ship "Star of Hope," for the reasons and causes in the said several libels respectively mentioned; and whereas, on or about the 23rd day of July, 1857, the said ship "Star of Hope," being in the custody of the marshal, under the process issued in pursuance of the prayer of the said several libels respectively, and being of the value of forty-five thousand dollars, as agreed upon between the parties libellant and claimant, Frederick Griffing, John Sime, George H. Kellogg, Flint, Peabody & Co., and Ira P. Rankin, on or about that day entered into a stipulation in the above cases, which was filed in the District Court of the United States for

the northern district of California, on the 25th day of July, 1857, in the following amounts respectively—that is to say: the said Frederick Griffing in the sum of fifteen thousand dollars, the said
298 John Sime in the sum of fifteen thousand dollars, the said George H. Kellogg in the sum of ten thousand dollars, the said Flint, Peabody & Co. in the sum of twenty thousand dollars, and the said Ira P. Rankin in the sum of ten thousand dollars, amounting in the aggregate to the sum of eighty thousand dollars, conditioned that they should at any time, upon the interlocutory and final order or decree of the said District Court, or of any appellate court to which the above-named suits, or any of them, might proceed, and upon notice of such order or decree to said claimant, or to Eugene Casserly, proctor of said claimant, pay into court the full value of forty-five thousand dollars aforesaid, in the several amounts aforesaid respectively, and abide by and pay to the extent of the full value aforesaid, in the several amounts aforesaid, the money awarded by any final decree rendered by the said District Court, or the Appellate Court, if any appeal should intervene.

And whereas, afterwards, and on or before August 28, 1860, an appeal was duly taken and perfected in all the said cases by the claimant therein from the said District Court of the United States for the northern district of California to the said Circuit Court of the
299 United States for the districts of California, in and for the northern district, in which court all the said cases are now pending on such appeal.

And whereas it is deemed desirable that Frederick Griffing, a surety in the said stipulation, should be released and discharged therefrom.

And whereas it has been agreed by and between the said libellants, and their assigns, and the said several stipulators, that the said Frederick Griffing should be released and discharged from said stipulation, and that William A. Dana and Alfred L. Tubbs should be substituted as stipulators in his place, in the same amount for which the said Frederick Griffing therein stipulated, and the parties hereto consenting and agreeing that in case of default or contumacy on the part of the claimant, or his sureties, execution may issue against their goods, chattels, and lands.

Now, therefore, it is hereby stipulated, for the benefit of whom it may concern, that the stipulators undersigned are together bound in the sum of fifteen thousand dollars, conditioned that they shall at any time, upon the interlocutory and final order or decree of the said Circuit Court, or of any appellate court to which the above-
300 named suits, or any of them, may proceed, and upon notice of such order or decree to said claimant, or to Eugene Casserly, proctor of said claimant, pay into court such portion of the said value of forty-five thousand dollars as shall be equal to the proportion of the said fifteen thousand dollars to the said eighty thousand dollars, the aggregate amount expressed in the above-mentioned stipulation, and abide by and pay in the proportion aforesaid, namely, of fifteen

thousand dollars to eighty thousand dollars, the money awarded by any final decree rendered by this court, or the Appellate Court, if any appeal intervene.

WM. A. DANA.
ALFRED L. TUBBS.

Taken and acknowledged this 18th day of January, 1861, before me.

CUTLER McALLISTER, *Clerk.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

William A. Dana and Alfred L. Tubbs, parties to the above stipulation, being each duly sworn, say, each for himself, that he is worth the sum of fifteen thousand dollars, over and above all his just debts and liabilities.

WM. A. DANA.
ALFRED L. TUBBS.

Subscribed and sworn to before me this 18 day of January, A. D. 1861.

CUTLER McALLISTER, *Clerk.*

301 Endorsed: Filed Jan'y 19, 1861. Cutler McAllister, clerk.

At a regular term of the Circuit Court of the United States of America for the districts of California, in and for the northern district, held at the court-house in the city of San Francisco on Monday, the 22nd day of July, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable M. Hall McAllister, judge of said court.

Order.

"STAR OF HOPE" *vs.* WM. C. ANNAN *et al.* } In admiralty.

And now, at this day, on motion of C. Temple Emmet, proctor for appellees, and with consent of E. Casserly, proctor for appellants, it is ordered that this cause be set for argument Thursday, July 25, 1861.

Endorsed: Filed 22nd day of July, 1861. Cutler McAllister, clerk.

302 At a regular term of the Circuit Court of the United States of America, in and for the northern district of California, held at the court-house in the city of San Francisco on Thursday, the 25th day of July, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Hall McAllister, circuit judge.

Order.

"STAR OF HOPE"
vs.
WM. C. ANNAN *et al.* } In admiralty.

And now, at this day, come the parties to this cause, by their respective proctors, and this cause was argued for appellant by Eugene Casserly, esq. There not being time to conclude the argument of this cause, the same was postponed until to-morrow, Friday, July, 26.

A true copy from the minutes.
Attest: GEO. C. GORHAM, *Clerk.*

Oct'r 7, 1864.

303 At a regular term of the Circuit Court of the United States of America, in and for the northern district of California, held at the court-house in the city of San Francisco on Friday, the 26th day of July, in the year of our Lord one thousand eight hundred and sixty-one.

Present: Hall McAllister, circuit judge.

Order.

"STAR OF HOPE"
vs.
WM. C. ANNAN *et al.* } In admiralty.

And now, at this day, came the parties to this cause, by their respective attorneys, and this cause was duly argued by C. Temple Emmet, proctor for respondents. The argument of this cause having been concluded, the same was submitted to the court.

A true copy from the minutes.
Attest: GEO. C. GORHAM, *Clerk.*

Oct'r 7, 1864.

304 At a regular term of the Circuit Court of the United States of America, in and for the northern district of California, held at the court-house in the city of San Francisco on Monday, the 1st day of June, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Ogden Hoffman, U. S. district judge.

Order.

SHIP "STAR OF HOPE," &c.,
vs.
W. C. ANNAN *et al.* }

And now, at this day, it is orded by the court that in accordance with an act of Congress entitled "An act to provide circuit courts

for the districts of California and Oregon, and for other purposes," approved March 3, 1863, all actions, suits, prosecutions, causes, pleas, process, and other proceedings relative to any cause, civil or criminal, heretofore pending in or returnable to the Circuit Court of the United States for the districts of California, in and for the northern district, be and they are hereby respectively transferred and made returnable and continued to this court.

Endorsed: Filed 21st July, 1863. G. C. Gorham, clerk.

305 At a regular term of the Circuit Court of the United States of America, in and for the northern district of California, held at the court-house in the city of San Francisco, on Tuesday, the 21st day of July, in the year of our Lord one thousand eight hundred and sixty-three.

Present, the honorable Steven J. Field, associate justice of the U. S. Supreme Court.

Order.

SHIP "STAR OF HOPE" *vs.* W. C. ANNAN *et al.* } In admiralty.

And now at this day, this cause being called in its regular order in the calendar, at the second calling thereof, on motion of E. Casserly, esq., for appellant, it is ordered that said cause be set for Wednesday, Aug. 5th, 1863.

Endorsed: Filed 21st July, 1863. Geo. C. Gorham, clerk.

306 At a regular term of the Circuit Court of the United States of America, in and for the northern district of California, held at the court-house in the city of San Francisco, on Wednesday, the 5th day of August, in the year of our Lord one thousand eight hundred and sixty-three.

Present, the honorable Stephen J. Field, associate justice of the U. S. Supreme Court.

Order.

SHIP "STAR OF HOPE" *vs.* W. C. ANNAN *et al.* } In admiralty.

And now at this day, this cause having been set for to-day, came the parties thereto by their respective proctors, Eugene Casserly, esq., for appellant, and C. T. Emmet, esq., for appellee, and said cause was duly argued and submitted to the court for consideration and decision.

Endorsed: Filed 5th August, 1863. G. C. Gorham, clerk.

307 At a regular term of the Circuit Court of the United States of America, in and for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the 13th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable Stephen J. Field, associate justice of the U. S. Supreme Court; the honorable Ogden Hoffman, U. S. district judge.

Order.

STAR OF HOPE *vs.* W. C. ANNAN *et al.* } In admiralty.

And now at this day, on motion of Mr. Casserly, cause set for Thursday, June 23, 1864.

Endorsed: Filed June 13, 1864. Geo. C. Gorham, clerk.

308

309 At a regular term of the Circuit Court of the United State of America, in and for the northern district of California, held at the court-house in the city of San Francisco, on Thursday, the 23rd day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable Stephen J. Field, associate justice of the U. S. Supreme Court; the honorable Ogden Hoffman, U. S. district judge.

Order.

STAR OF HOPE *et al.* *vs.* W. C. ANNAN *et al.* } In admiralty.

And now at this day, on motion of Mr. Casserly, for appellant, ordered that this cause be set for Wednesday, June 29, 1864.

Filed 23 June, 1864. G. C. Gorham, clerk.

310 At a regular term of the Circuit Court of the United States of America, in and for the northern district of California, at the court-house in the city of San Francisco, on Wednesday, the 29th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable Stephen J. Field, associate justice of the U. S. Supreme Court; the honorable Ogden Hoffman, U. S. district judge.

Order.

"STAR OF HOPE" *vs.* W. C. ANNAN *et al.* } In admiralty.

And now at this day, this cause, having been regularly set for to day, was called, and Eugene Casserly, esq., counsel for appellants, comes into court, no person appearing for appellees, and the appeal herein was duly argued by Mr. Casserly, and submitted to the court.

Endorsed: 29 June, 1864. Geo. C. Gorham, clerk.

311 At a regular term of the Circuit Court of the United States of America, in and for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the 26th day of September, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable Stephen J. Field, associate judge of the U. S. Supreme Court; the honorable Ogden Hoffman, U. S. district judge.

STAR OF HOPE *vs.* W. C. ANNAN *et al.* } In admiralty.—16 cases consolidated.

And now at this day, it is ordered that the decree of the District Court of the United States, in and for the northern district of California, in these cases, be and the same hereby is, in all things affirmed, with costs against the said appellant, and that a decree be entered accordingly.

312 *Decree.*

CROSBY & DIBBLEE *vs.* SAME. }

DAVID M. BURKE *vs.* SAME. }

MOORE & FOLGER *vs.* SAME. }

BOND & HALL *vs.* SAME. }

J. Y. HALLOCK *et al.*
vs.
SAME.

D. R. PROVOST
vs.
SAME.

BENJ. H. NESBITT
vs.
SAME.

PARK & WHITE
vs.
SAME.

JONES & STEVENS
vs.
SAME.

JAMES PATRICK *et al.*,
vs.
SAME.

Decree in circuit Court

JAMES M. EMBURY *et al.*
vs.
SAME.

This cause having been heard at the present term of this court, on appeal from the United States District Court for the northern district of California, on the transcript of the record of said court, and
313 the pleadings and the proofs taken therein, and the arguments of the respective proctors, and submitted to the court, and due deliberation being had in the premises, and the court, on the 26th day of September, A. D. 1864, having ordered that the decree of the said District Court be affirmed, with costs, and that a decree be entered accordingly.

Now, therefore, by virtue of the law, and by reason of the premises, it is ordered, adjudged and decreed that the exceptions taken by the said libellants to the report of William H. Chevers, esq., the commissioner to whom this cause was referred on the fifth day of November, one thousand eight hundred and fifty-eight, be sustained; and that the exceptions taken by said claimants to the said report be overruled; and it is further ordered, adjudged, and decreed:

That the libellants, William C. Annan, William H. Talmage, and James W. Embury, recover against the defendant the sum of twenty-six thousand four hundred and sixty-nine dollars, ($26,469,) with costs.

That the libellant, Jesse Sawyer, recover from the defendant the sum of thirteen thousand six hundred and fourteen dollars
314 and fifty-four cents, ($13,614 54,) with costs.

That the libellants, Adrain & Story, recover from the defendant the sum of three hundred and seventy-five dollars and sixty-three cents, ($375 63,) with costs.

That the libellant, J. D. Wing, recover from the defendant the sum of two hundred and ninety-seven dollars and ninety cents, ($297 90,) with costs.

That the libellants, J. M. Pommares & Co., recover from the defendant the sum of two hundred and thirteen dollars and ninety-one cents, ($213,91,) with costs.

That the libellants, Crosby & Dibblee, recover from the defendant the sum of six hundred dollars and fifty-two cents, ($600 52,) with costs.

That the libellant, D. R. Provost, recover from the defendant the sum of eight hundred and thirty-two dollars and eighty cents, ($832 80,) with costs.

That the libellant, D. H. Burke, recover from the defendant the sum of one thousand nine hundred and forty-three dollars and ninety-eight cents, ($1,943 98,) with costs.

That the libellant, B. F. Nesbitt, recover from the defendant the sum of seventy-seven dollars, ($77,) with costs.

315 That the libellants, Moore & Folger, recover from the defendant the sum of two hundred and thirty-two dollars and eleven cents, ($232 11,) with costs.

That the libellants, Park & White, recover from the defendant the sum of two hundred and thirty-two dollars, ($232,) with costs.

That the libellants, Bond & Hall, recover from the defendant the sum of three hundred and thirty-eight dollars and seventy-two cents, ($338 72,) with costs.

That the libellants, Jones & Stevens, recover from the defendant the sum of seven hundred and twenty-two dollars and eighty-four cents, ($732 84,) with costs.

That the libellants, J. Y. Hallock & Co., recover from the defendant the sum of one thousand four hundred and four dollars and ninety-five cents, ($1,404 95,) with costs.

That the libellants, J. Patrick & Co., recover from the defendant the sum of ten thousand six hundred and ninety-one dollars and thirty-eight cents, ($10,691 38,) with costs.

That the libellants, J. W. Embury, William C. Annan, and George Hazzard, recover from the defendant the sum of ten thousand seven hundred and nineteen dollars and twenty-seven cents, ($10,719 27.)

And it is further ordered, adjudged, and decreed that the claimant, Henry Pearsons, do forthwith pay into court the sum of

316 forty-five thousand dollars, being the amount of the appraised value of the said ship "Star of Hope," delivered to him on stipulation, as in the proceedings mentioned, and unless he shall do so within ten days from the date of this decree, that a summary judgment be entered upon the stipulation aforesaid against all the parties thereto, and that execution in due form of law issue thereon.

Decree entered October 1, 1864.

GEO. C. GORHAM,
Clerk.

317 Circuit Court United States, tenth circuit, northern district Califor.

Taxed costs.

WM. C. ANNAN *et al*, libellants and appellees,
vs.
SHIP "STAR OF HOPE," claimant and appellants.

Memorandum of costs of clerk's fees in former Circuit Court	$5 30
Clerk's fees in present Circuit Court	447 40
	$452 70

Taxed at $452 70.

GEO. C. GORHAM, *Clerk.*

Oct'r 1, '64.

Endorsed: Filed Oct'r 1, '64. G. C. Gorham, clerk.

318 Circuit Court United States, tenth circuit, northern district of California.

Proctor's costs.

WM. C. ANNAN *et al.*, libellants and appellees,
vs.
SHIP "STAR OF HOPE," claimant and appellee.

Memo. of proctor's fees.

Appellees' proctor's fees, $20.
Taxed at $20.

GEO. C. GORHAM, *Clerk.*

Oct'r 1, 1864.

Endorsed: Filed Oct'r 1, 1864. G. C. Gorham, clerk.

319 United States Circuit Court, tenth circuit, in and for the northern district of California.

Certificate.

WILLIAM C. ANNAN *et al.*, appellees
vs.
SHIP "STAR OF HOPE," appellant.

I, Geo. C. Gorham, clerk of the Circuit Court of the United States for the northern district of California, in the tenth circuit, do hereby certify that the foregoing papers, hereto annexed, constitute the judgment record in the above-entitled cause, recorded in judgment record book, in admiralty, No. 1 of said court, at page .

Witness my hand and the seal of said court, this 1st day of October, A. D. 1864.

[SEAL.] GEO. C. GORHAM,
Clerk.

[5-ct. rev. stamp.]

320

321 At a stated term of the Circuit Court of the United States of America, for the district of California, held at the court-room, in the city of San Francisco, on Monday, the 27th day of February, in the year of our Lord one thousand eight hundred and sixty-five.

Present: The honorable Stephen J. Field, circuit judge.

Order of substitution of attorneys.

SHIP "STAR OF HOPE"
v.
W. C. ANNAN *et al.*

And now at this day comes S. Sharp, esq., and presents a written stipulation, signed by C. Temple Emmet, proctor for libellants, consenting to the substitution of Messrs. Sharp & Lloyd, as proctors for W. C. Annan, Wm. H. Talmadge, J. W. Embury, and J. W. Embury, W. C. Annan, and George Hazard, libellants and intervenors in this cause.

Whereupon, on motion of S. Sharp, esq., it is ordered by the court that Messrs. Sharp & Lloyd be and they are hereby substituted as proctors for W. C. Annan, Wm. H. Talmadge, J. W. Embury, and J. W. Embury, W. C. Annan, and George Hazard, libellants and intervenors in place and stead of C. Temple Emmet.

A true copy from the minutes.

Attest: GEO. E. WHITNEY, *Clerk.*

322 At a stated term of the Circuit Court of the United States of America for the district of California, held at the court

room, in the city of San Francisco, on Friday, the 5th day of May, in the year of our Lord one thousand eight hundred and sixty-five.

Present: The honorable Stephen J. Field, circuit judge.

Order for execution.

SHIP "STAR OF HOPE"
v.
W. C. ANNAN *& al.*

And now, on motion of Solomon Sharp, esq., proctor for libellants, it is ordered that execution issue upon the decree hereinbefore rendered.

A true copy from the minutes.

GEO. E. WHITNEY, *Clerk.*

323 At a stated term of the Circuit of the United States of America, for the district of California, held at the court-room, in the city of San Francisco, on Saturday, the 6th day of May, in the year of our Lord one thousand eight hundred and sixty-five.

Present: Hon. Stephen J. Field, circuit judge.

Order staying execution.

W. C. ANNAN *et al.*
v.
SHIP "STAR OF HOPE."

And now, at this day, it is ordered by the court, that the order made on yesterday herein allowing execution, be stayed until Wednesday next, May 10th, 1865.

A true copy from the minutes.

GEO. E. WHITNEY, *Clerk.*

324 At a stated term of the Circuit Court of the United States of America, for the district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 10th day of May, in the year of our Lord one thousand eight hundred and sixty-five.

Present: Hon. Stephen J. Field, circuit judge.

W. C. ANNAN *et al.*
v.
SHIP "STAR OF HOPE."

And now, this day, it is ordered that the hearing of the motion heretofore set for to-day, to issue execution herein, be postponed until Thursday next, May 18th, 1865.

A true copy from the minutes.

GEO. E. WHITNEY, *Clerk.*

325 At a stated term of the Circuit Court of the United States of America, for the district of California, held in the court-

room, in the city of San Francisco, on Thursday, the 18th day of May, in the year of our Lord, one thousand eight hundred and sixty-five.

Present: Hon. Stephen J. Field, circuit judge.

Order of continuance.

W. C. ANNAN *& al.*
vs.
SHIP "STAR OF HOPE."

And now, at this day, by consent of the respective counsel, the argument in the motion to issue execution herein, is postponed until Tuesday, May 30th, 1865.

A true copy from the minutes.

GEO. E. WHITNEY, *Clerk.*

326 In the Circuit Court of the United States for California, on appeal from the decree of the U. S. District Court for the northern dist. of Cal'a.

Notice of assignment.

W. C. ANNAN *et al.*
vs.
THE SHIP "STAR OF HOPE."

In which case is the intervention and co-libellant of J. W. Embury *et al.*, decree for $10,719 27-100, contained and reported by the commissioner of said court, in favor of said, and the sum of six hundred and eight ($680), a part thereof, is reported as due to Joseph T. Ham, for services. See Schedule B of said report.

The above claim of Joseph T. Hamm was on the 16th August, 1862, assigned to J. H. Phillips, in writing, to wit, as follows:

"I, Joseph T. Hamm, hereby assign, set over, and transfer unto J. H. Phillips, and his assigns, all my right, interest, and claim in and to the following claim I now have against the ship "Star of Hope," and the funds arising therefrom due me, the sum of six hundred and eighty dollars, with the interest thereon.

"To have and to hold the same as collateral security for my note, bearing even date herewith, for fifty dollars, on the conditions set forth in said note.

"Aug. 16, 1862.

(Signed) JOS. T. HAMM."

327 The within note referred to still remains due and unpaid by said Hamm, with its interest from maturity thereof, to wit, 23rd August, 1862, until paid, at rate of five (5) per cent. per month, the interest payable monthly, in advance, and if not so paid to become a part of the principal, and bear therefore the same interest.

The said Phillips now gives notice that he claims the amount due

and owing to said Hamm, as aforesaid, or so much thereof as will pay and satisfy said note, with the interest thereof so compounded, as set forth in said note.

May 23, 1865.

J. D. CREIGT, *Att'y for J. H. Phillips.*

The clerk of the U. S. Circuit Court [of U. S.] will please file this notice of assignment and claim.

23rd May, 1865.

J. D. CREIGT, *Att'y for J. H. Phillips.*

Endorsed: Filed May 23rd, 1865. Geo. C. Gorham, clerk, p'r Huestis, dep. clerk.

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329 SHIP "STAR OF HOPE," &c.,
v.
W. C. ANNAN *& al.*

1866. March 7. Issued execution against stipulators on bond for agreed value.

A true copy of an entry on the register.

Attest: GEO. E. WHITNEY, *Clerk.*

330

331 In the Circuit Court of the United States for the districts of California, in and for the northern district.

Appeal in admiralty.

1. THE SHIP "STAR OF HOPE," her tackle, apparel, and furniture, &c., Henry Pearsons, claimant of the said ship "Star of Hope," her tackle, &c., appellant,
vs.
WM. C. ANNAN, WM. H. TALMAGE, AND JAMES W. EMBURY, libellants and appellees.

2. SAME APPELLANT
vs.
JESSE SAWYER, libell't and appellee.

3. SAME APPELLANT
vs.
ADRAIN & STORY, libell'ts and appellees.

4. SAME APPELLANT
vs.
J. D. WING, libellant and appellee.

5. SAME APPELLANT
vs.
J. M. POMMARES & Co., libel'ts & appellees.

332 6. SAME APPELLANT
vs.
CROSBY & DIBBLEE, libell'ts & appellees.

7. SAME APPELLANT
vs.
D. R. PROVOST, libel. and appellee.

8. SAME APPELLANT
vs.
DAVID H. BURKE, libell'ts and appellees.

9. SAME APPELLANT
vs.
BENJ. F. NESBITT, libell't and appellee.

10. SAME APPELLANT
vs.
MOORE & FOLGER, libell'ts and appellees.

11. SAME APPELLANT
vs.
PARK & WHITE, libell'ts and appellees.

12. SAME APPELLANT
vs.
BOND & HALL, libell's and appellees.

13. SAME APPELLANT
vs.
JONES & STEVENS, libell'ts and appellees.

14. SAME LIBELLANT
vs.
J. Y. HALLOCK & Co., libell'ts & appellees.

15. SAME APPELLANT
vs.
JAMES PATRICK & Co., libell'ts & appellees.

16. SAME APPELLANT
vs.
JAMES W. EMBURY, WM. C. ANNAN, AND GEORGE HAZZARD, libellants and appellants.

333 *Affidavit of Chevers.*

NORTHERN DISTRICT OF CALIFORNIA,
City and county of San Francisco, ss:

W. H. Chevers, having been duly sworn, says:

In all the above suits I was deputy clerk of the District Court at the date of bringing them, and about a year afterwards I became clerk, and so continued until after the appeal therein to the Circuit Court.

I. On or about November 5th, 1858, in pursuance of an order of the District Court, (Trans. 220, 222,) the whole case was referred to me as a commissioner, to report according to the terms of said order. No evidence was produced before me on either side upon said reference, except that certain schedules or exhibits, including a folio volume bound in red, containing the adjustment of the averages in the matter of the said ship "Star of Hope," and which were produced by J. P. Haven, esq., proctor of libellants, (and which are the same referred to in my report, trans. 338–46,) were received by consent of all parties as containing a correct statement of amounts, values, &c., leaving the questions of law to be decided by the court. And

334 the amounts written in red in the agreed statement of facts were modified or left to stand as written upon the data contained in said exhibits.

I had nothing to do with making out or casting the several amounts contained in the decree or any of them, and I do not know whether the same are correct or otherwise under the "agreed statement of facts" and the data contained in the exhibits.

My impression is that those amounts were prepared by Mr. Haven, proctor of libellants. My report as commissioner was by consent of the parties, in order to enable them to present to the court the questions of law, which were the only points in controversy in the case. Throughout, my understanding was that all the figures and calculations, as well those in the exhibits as in the decree, were made by Mr. Haven, or under his direction.

Whether, in computing and casting the amounts of the decree in favor of Annan, Talmage, and Embury, libellants, Mr. Haven allowed to the ship the deductions provided for in the "agreed statement of facts," on account of moneys due on the charter-party, or moneys paid or secured to be paid by the consignees in this city, as their share of the average, I cannot say. No such deduction was made by me as commissioner; nor was it made otherwise, so far as I know.

335 The whole case was one of extended and complicated details and calculations in general and particular average, prepared by Mr. Haven, and with which I had nothing to do except to report them to the court by consent of the parties.

II. In the taking of the appeal in this case to the Circuit Court, I know that true copies of the exhibits or "Schedules A, B, C and D," were sent up by me annexed to the rest of the transcript by red

tape passing through the hole in the upper left-hand corner of them and under my seal as clerk and forming a part of the transcript, and I had no doubt whatever but that the other exhibit, the "folio volume in red," was also sent up by me, at the same time, in the same way, as a part of the transcript. Said holes are visible in the covering of the exhibits "A to D," now in the office of the clerk of the Circuit Court. The red tapes attached to the body of the transcript at my seal are also still to be seen, showing where they were cut in separating the exhibits from the rest of the transcript, obviously for the purposes of examination, which otherwise could not have been made conveniently, if at all.

336 III. I have seen and looked through a book in the office of E. Casserly, esq., purporting to be an exact copy of the "volume in red," and which so appeared to me from the general character of its contents.

About the date of the appeal I received of Messrs. Flint, Peabody & Co., agents of the ship in San Francisco, the sum of two thousand and sixty-seven and 2-100 dollars, ($2,067 02.) charged by me in my bill of costs (transcript) as commissioner, and which was, in fact, in full of the fees of Mr. J. P. Haven in making up the said folio volume in red on the original adjustment, and was then paid over by me to Mr. Haven.

W. H. CHEVERS.

Subscribed and sworn to before me, this 11th day of May, A. D. 1866.

DAN'L T. SULLIVAN,
U. S. Comm'r.

337 *Affidavit of McAllister.*

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

Cutler McAllister, having been duly sworn, says:

I was clerk of the Circuit Court of the United States, &c., for the said northern district, in December, 1860, at the date of the appeal in all of the above-entitled causes to that court from the District Court, and continued to be clerk until about January, A. D. 1862.

As such clerk, I received and filed the papers forming the "Transcript of the record" on the appeal, besides the exhibits or schedules "A, B, C, and D," now remaining on file on the appeal in the Circuit Court, herein, marked, "Filed December 12th, A. D. 1860," in my handwriting. I remember distinctly another manuscript book or "Exhibit" of the same general appearance as to size and shape of paper and somewhat similar in the character of the contents, which was filed at the same time with them as a schedule or exhibit in the case, and as forming a part of the papers on the appeal, and which, according to my best recollection and belief, purported to be an

adjustment or statement of the average in the matter of the
338 ship "Star of Hope." All these exhibits being unusual in size and shape, and the character of their contents, and embracing a mass of figures and calculations, attracted my attention in a marked degree, and left a very distinct impression on my memory.

I have seen in the hands of E. Casserly, esq., counsel of appellant, in this case, the book bound in red, purporting to contain a copy of the contents of said last-named exhibit. I have looked into said book, and the contents thereof appear to me to be of the same general character with those of the said exhibit.

So far as I am aware, all the said exhibits, as filed with me on the appeal herein, as aforesaid, remained on file so long as I continued in office. If, as I understand, the last-named exhibit cannot now be found, I do not know what has become of it.

CUTLER McALLISTER.

Sworn and subscribed before me this 11th day of May, A. D. 1866.

GEO. C. GORHAM, *Clerk.*

[SEAL.] By S. NEALL, *D. C.*

339 *Aff'd't of Emmet.*

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

C. Temple Emmet, having been duly sworn, deposes and says:

I. In all the above-entitled causes, as well in the District Court as upon the appeal in the Circuit Court, I was of counsel for the libellants respectively, and continued to act as such until February 21, 1865, when I gave a substitution to Messrs. Sharp & Lloyd.

J. P. Haven, esq., was the proctor who originally brought said suits in the District Court, and throughout the litigation, especially in that court, he had special charge of all matters of detail and figures respecting the amounts claimed in each cause, the decree to be entered up therein, &c. Being also an average adjuster of established position and ability in that line, and having made up the original adjustment before any suit brought, he had exclusive charge of the statement of the average, &c., in these causes, and of the whole matter of amounts due and payable in contribution, on one side or the other, and of the voluminous, complicated, and minute calculations necessary to be made. These figures, calculations,
340 &c., were contained in certain exhibits annexed to the report of Wm. H. Chevers, esq., commissioner, &c., in the court below (Trans. 238–42,) and therein referred to as "Schedules A, B, C, & D," and "the folio volume" bound in red, and lettered on the cover "Statement of general and particular average," &c.

All these exhibits were prepared by Mr. Haven, or under his direction, with the consent of all parties in the case, the utmost confidence being felt in his ability and accuracy. As to amounts, values,

&c., there was no controversy between the parties, the same being purely a matter of calculation as was considered.

The only real questions in the case were: 1st. As to the average by reason of the stranding of the ship "Star of Hope" at the bay of San Antonio, and whether it was general or particular; and 2. as to certain details of the commissioner's report. To the management of the case in respect to these questions, my attention, as counsel of libellants, was confined. Upon the reference to commissioner Chevers, no evidence was presented on either side, except the said exhibits and the agreed statement of facts in writing in the case. His report was by consent, and the figures in red, in the "agreed state-
341 ment of facts," were left to stand, or were modified according to the figures in the "Exhibits," which were accepted as true, in order to present to the court for its adjudication the questions of law involved.

The "agreed statement of facts" and the "Exhibits" (including the volume in red) contained all the evidence which was presented in the case, and also (it was supposed) all the date for the final decree, whatever might be the decision of the court on the question of law, whether for one party or the other.

II. In the entering of the final decree in favor of libellants, in the District Court, the amounts awarded to them, in the several causes respectively, were prepared exclusively by Mr. Haven, as the result of the computations necessary to be made upon the exhibits and the "agreed statements of facts," under the principle established by the district judge in his decision of the questions of law aforesaid.

In the making of these computations by Mr. Haven, entire confidence was reposed by all parties in his perfect accuracy.

III. With respect to the decree in favor of the libellants Annan, Talmage, & Embury, in the first of the above-entitled
342 causes.

In the "agreed statement of facts" it was provided that from any amount found due them, a deduction should be made of $26,177 81, balance due by them upon the charter-party of the ship; and also of a further amount (not specified in the "agreed statement,") for moneys paid or secured to be paid to them by the several consignees of the cargo, as their proportion of the general average in San Francisco, the decree in their favor to be only for the sum remaining after such deduction.

That the deduction for balance due on the charter-party was to be made, was a point held prominently in view, and fully recognized and understood on both sides throughout the litigations. According to my best information and belief, no such deduction ever was in fact made, as provided by the "agreed statement of facts," though my impression is that a sum of money (the exact amount of which should appear, if I am correct, from the exhibits) was allowed the ship for freight on goods sold at Montevideo, and which would have been earned had such goods been actually delivered at San Francisco. Why this deduction was not made, I cannot say.

The amounts to be inserted in favor of the respective libel-

343 lants in the decree were simply matters of computation from the figures contained in the "exhibits," taken in connection with the "agreed statement of facts" and the principles of law settled in the decision of the District Court determining the questions of law involved in favor of the libellants. These computations required however extensive and intricate calculations which, like other details of the same general character throughout the case, were left by me entirely to my associate, Mr. Haven, and the results as figured out by him were accepted as correct without hesitation by me and (as I always understood) by the agents of the ship, in San Francisco.

With regard to the other deduction for moneys paid or secured to be paid to Annan, Talmage & Embury in San Francisco, by the consignees of cargo as their proportions respectively of the general average, my present recollection is quite indistinct. My impression is, however, that nothing was done about it, though for what reason I am unable to say.

IV. Some time after the entry of the decree in the District Court, August 18, 1860, and shortly before the case was removed by appeal into the Circuit Court, Mr. Haven died, on or about November 344 24, 1860, and I became proctor and counsel in all the causes.

On the appeal no further evidence of any kind was offered on either side. The case was heard, argued, and decided as to the facts upon the "agreed statement of facts" and the exhibits aforesaid, including the exhibit described as "the folio volume in red."

These exhibits being upon paper of very large and unusual size, it was deemed best in the taking of the appeal not to copy them into the body of the transcript, which was on paper of the usual size, but to send them up as separate schedules together with, and as a part of, the transcript. They were so sent up by the clerk of the District Court, Mr. Chevers, and were filed in the Circuit Court. There may have been an addition or written stipulation of the proctors on both sides, making them a portion of the transcript on appeal. What is certain is, that they were regularly in the Circuit Court on the appeal, as a portion of the transcript. My recollection is quite distinct of having seen them in the Circuit Court, and I am quite certain that during one or more of the two arguments of the appeal before the late circuit judge, McAllister, said exhibits were referred to by counsel in the course of the argument, and 345 they were treated throughout, by counsel on both sides, as forming a very material portion of the transcript on appeal, essential to the discussion and decision of the merits of the case. In this view, I recollect distinctly, taking pains to satisfy myself shortly after the appeal to the Circuit Court, whether those exhibits had come up as a part of the transcript so as to give to our clients the benefit of them on the appeal; and that I then ascertained to my satisfaction, either by my own examination, or otherwise, that they had so come up.

I was very familiar with the general appearance and character of the contents of the "Exhibits" above mentioned, including the "folio

volume in red." I have seen in the hands of E. Casserly, esq., proctor for the ship, a folio volume, purporting to be an exact copy of said "folio volume in red," and which appears to me, from a cursory examination of its contents, to be such copy.

V. I know Joseph T. Hamm, and have been acquainted with him for some years. He was engaged as the assistant or clerk of Mr. Haven's in making of the "Statement" or "Adjustment," in the case of the ship "Star of Hope," contained in the "folio
346 volume in red," above referred to, and prepared by Mr. Haven, as adjuster for Messrs. Annan, Embury & Hazzard, the libellants in cause No. above mentioned, before the litigation commenced. Mr. Hamm was also so engaged for Mr. Haven, after and during the litigation in the court below, in the making of the exhibits "A, B, C, and D," above mentioned; which, with the "folio volume in red," were the exhibits presented by Mr. Haven. In my judgment Mr. Hamm was quite conversant with the said "folio volume in red," and the other exhibits, and with their contents.

C. TEMPLE EMMET.

Sworn and subscribed before me, this 11 May, 1866.

S. NEAL,
U. S. Com.

[Intr. rev. stamp, 5 ct.]

347 *Aff'd't of Flint.*

NORTHERN DISTRICT OF CALIFORNIA,
City and county of San Francisco, ss:

Edward P. Flint, having been duly sworn, deposes and says:

1. I am a member of the firm of Flint, Peabody & Co., of San Francisco, composed by Alfred Peabody, of Boston, and James P. Flint, George H. Kellogg, and myself, of this city. At and since the arrival of the ship "Star of Hope" at this port, on or about December 7, 1856, at the end of the voyage from the port of New York hither; during which voyage the loss and injury to the ship, and the consequent sale of the cargo, for funds to make repairs, occurred, out of which the present litigation arose. The said firm of Flint, Peabody & Co. were the agents in this city of the said ship and of her owners, Messrs. B. B. Titcomb and Charles H. Coffin, of Massachusetts; though I have had charge in a more especial manner of the said litigation, and of the interests of the said ship and her owners connected therewith, except during some periods of occasional absence from this city, when Mr. George H. Kellogg had charge in my stead.

348 2. Upon the arrival of the ship in this port, Messrs. Annan, Embury, and Hazzard, the libellants in cause No. 1, above mentioned, forming the copartnership of W. C. Annan & Co., claimed and obtained from our firm the consignment of the ship, as the successors in interest of Annan, Talmage & Co., her charterers, who were also the libellants in cause No. 1, above-mentioned; and pro-

ceeded to have an adjustment made of the average in respect of the losses and injury, and consequent sale of cargo occurring on the ship's voyage hither. This adjustment was made by Joshua P. Haven, esq., upon the leading principle that the injury to the ship which necessitated the repairs and consequent sale of the cargo to raise funds, took place under such circumstances as to make injury a case of particular, not of general, average; throwing the main part of the contribution therefor upon the ship alone, instead of apportioning it upon the ship and cargo. This principal was objected to as erroneous by the Boston insurance offices in which the ship was insured, while it was sustained by the New York insurance offices, in which the cargo was insured. The case being deemed one of great novelty, interest, and importance, the owners of the ship determined, by arrange-
349 ment with the Boston underwriters to bring the principle involved in the adjustment to the test of a decision, if necessary, by the Supreme Court of the United States; and for this purpose declined to be bound by the adjustment. No question was then, or at any time, made as to the accuracy of the details, calculations, values, &c., of Mr. Haven's statement of the average; the only point being, at that time, whether the damage to the ship, and consequent loss in the sale of goods, should be treated as general or particular average.

The instructions of the owners to our firm were to expedite a decision of the leading question of law, without interposing any delays as to the matters of detail in making up the computations, &c., for the statement.

3. At that time, and throughout the litigation, while he lived, Mr. Haven was esteemed both here and in the commercial centres of the east an unsually skilful and reliable adjuster—whose figures, computations, &c., especially as to the matters of detail, might safely be accepted by both parties to any controversy in matters of average.

The result was that at all times, even after Mr. Haven, as proctor for libellants, had commenced the suits above-mentioned, with
350 the avowed purpose of testing the question of law involved; and while he was prosecuting the same, I deemed it my duty, though he occupied a position of apparent hostility to the ship, to accept, without special scrutiny, his figures, computations, accounts, &c., as to all matters of detail, apart from the legal principles involved; such I deemed to be in accordance with the spirit of our instructions from our principals in Massachusetts, and their frequently expressed desire to obtain an early decision of the interesting and important principles involved, without litigious contest as to unquestioned and mere arithmetical details.

4. Hence our consent to allowing Mr. Haven, though the proctor of the adverse parties, to prepare the several voluminous and important exhibits in the case referred to in the report of the commissioner, Mr. Chevers, and upon which all the results of the case turned so far as they depended upon computations, and expressed themselves in the amounts of money awarded in the decree.

5. While the litigation was still in progress in the District Court,

very frequent conferences took place between me and Mr. Haven, generally of his seeking, in the whole course of which it was understood fully between us that on the part of the ship and her
351 owners, we desired to try judicially the question of average involved, and were willing to rely for the figures, amounts, &c., in all the details upon the original adjustment as prepared for Messrs. Annan, Embury, and Hazzard, which was objected to only as to the principle on which it was made up, and upon my exhibits prepared therefrom subsequently in the course of the litigation. This adjustment was contained in one of the "exhibits" furnished by Mr. Haven, and accepted by us as a part of the commissioner's report, and therein referred to as the "folio volume in red." As expressed in the "agreed statement of facts" in these causes, Messrs. Annan, Talmage, and Embury were the charterers of the ship for the sum of $36,000, fixed in the charter-party; of which but $9,822 20 ($6,000 cash, and $3,822 20 freight of coal, shipped on owner's account) had been paid, leaving a balance of $26,177 81 still due upon the charter-party. It was throughout fully understood between Mr. Haven and me, that this balance should be deducted from any amount found due Messrs. Annan, Talmage, and Embury in the adjustment in this case, and that the decree in their favor, if any, should be only for the residue as provided in the agreed
352 statements of facts.

6. At this distance of time, it is impossible for me to recall distinctly all the leading circumstances connected with the entry of the decree in the District Court, and the fixing of the several amounts therein inserted in favor of the respective libellants; especially of Annan, Talmage, and Embury. What I can state distinctly is as follows: At the time I was greatly engrossed with very important private business of my own; and having throughout relied implicitly, for the reasons already stated, in the accuracy of Mr. Haven's calculations, and the questions of law being now settled by the court, I felt he could be trusted fully in ascertaining the amounts to be inserted in the decree, which were simply a matter of arithmetical computation from the figures contained in the exhibits prepared by him in the case, in connection with those in the "agreed statement of facts;" that in the case of Annan, Talmage & Embury, the balance unpaid on the charter-party was to be deducted, and their decree to be only for the residue, if any, were points fully and prominently kept in mind between Mr. Haven and me, down to the last moment, as a matter of course, as much as the entry of the decree. I was also anxious to have the decree entered with
353 as little delay as possible, with a view to an appeal to the Circuit Court as the next step towards obtaining a final decision of the questions involved; not only because such was the wish of the owners of the ship and the other parties in interest with them, but because I greatly desired to terminate, at the earliest moment, the responsibility assumed by our firm here in agreeing to indemnify the other sureties on the stipulation given for the ship's value in $45,000; which stipulation, in case of an appeal, would

have to be transferred to the Circuit Court, there to remain until the final determination of the controversy, which might not take place for years.

Influenced by these motives, I had no hesitation in accepting the figures as fixed in the decree by Mr. Haven; understanding fully that, especially in the case of Annan, Talmage & Embury, they were entirely correct, and that the amount due on the charter-party had been deducted, and the decree entered only for the balance.

7. Mr. E. Casserly, who had been for years the regular standing counsel of our firm in all its business, was employed by us for the ship throughout the litigation. Mr. Haven had frequently complained to me very emphatically of what he termed the
354 impossibility of "getting along" with Mrs. Casserly, on account of his tenacity in all matters affecting or supposed to affect the ship's interest. For this reason also, though I desired that Mr. Casserly should present as fully, and in whatever manner he saw fit, for the decision of the courts, the questions of law involved, yet, as to the details of figures, which are purely matters of calculation, I was willing to accept Mr. Haver's results as correct.

8. I am informed, and fully believe, that the balance due on the charter-party was not, nor was any part of it, deducted before entering the decree in favor of Annan, Talmage & Embury for $26,469, and that this is clearly shown by the examination of the figures, amounts, &c., in the exhibits in the case.

9. It was further agreed between Mr. Haven and me, that in casting the amount of the decree in favor of Annan, Talmage & Embury, a further deduction should be made of an amount stated by him according to my best recollection, at fourteen thousand three hundred dollars for moneys paid and secured to be paid to Annan, Talmage & Embury, in San Francisco, by consignees of cargo for their share respectively of the general average. A similar
355 allowance was provided for in the "agreed statement of facts," though without specifying any amount.

On my information and belief, I state that this deduction also was not made, or any part of it; and that this will appear distinctly upon examination of the contents, figures, &c., of the exhibits in the case.

10. At the time of entering the decree, in the District Court, I certainly understood, and fully believed, from all my conversations with Mr. Haven, that both the deductions above mentioned in this affidavit, had been duly made in the case of Annan, Talmadge & Embury, and that the decree in their favor was only for the balance; and I had not the smallest doubt about the matter.

The very first intimation I had to the contrary was when or soon after Messrs. Sharp and Lloyd, proctors for Messrs. Brett, Son & Company, of New York, (composed of Martin W. Brett, James E. Brett, Elijah Houghton, and J. E. Miller, all of whom are non-residents,) claiming to be the assignees of the decrees in libels 1 and 16, in favor of Annan, Talmadge & Embury, and Annan, Embury & Hazzard respectively, commenced their proceedings to collect those
356 two decrees, by a motion in this court (before Judge Field) for

leave to issue execution against the stipulators for the appraised value of the ship.

11. Ever since that time, negociations have been pending between me, on one side, and Messrs. Sharp and Lloyd, on the other, for a settlement upon the basis of the facts stated in this and the annexed affidavits. These negotiations involved, on both sides, correspondence with principals at the east; and also extended examinations here of the exhibits in the case (including "the folio volume in red") and voluminous calculations.

So long as they were pending, it was not deemed necessary on either side that any proceedings should be taken for the protection of the parties, liable on the two decrees in question, and for this reason they were not taken; within a day or two, these negociations have reached a point where it is apparent nothing can be effected by them.

12. Messrs. Brett, Son & Co., for whom alone Messrs. Sharp and Lloyd are acting, claim only as assignees of the decrees in libels Nos. 1 and 16, and claim no right or interest in the other decrees or any of them.

357 13. I further state on my information and belief, that on or about March 7th, 1866, Messrs. Sharp & Lloyd, proctors for said Brett, Son & Co., claiming as assignees, &c., caused execution to be issued against all the parties to the stipulation herein; of which fact I was first made aware May 10, 1866. Although the question as to the issuance of execution, amount for which it should issue, if at all, and the other matters connected therewith as hereinbefore set forth, was and is pending before this court upon an ex parte motion originally made on or about May, 1866, by Messrs. Sharp and Lloyd for an order that execution issue, which order was on the same day made by Judge Field, but was subsequently on application of Mr. Casserly for the ship, and with the consent of Mr. Sharp in open court, agreed and deemed to be set aside, and the whole question opened for hearing. That said motion and questions were never decided by Judge Field, but were still pending before him at the time of his last departure from this city for Washington, and have never since been disposed of in any way.

14. I am also informed and believe that the only assignment of the claims in libels Nos. 1 and 16, ever made to Brett, Son &
358 Co., is the alleged assignment filed in this case, in the District Court, July 16, 1857. And that the same is insufficient to vest in said Brett, Son & Co. the decree in said libel No. 1, or any part thereof.

II. With respect to the decree in favor of Messrs. Annan, Embury and Hazzard, the libellants in cause No. 16, above-mentioned, for $10,719 27 cts., I state as follows:

15. Of this decree the sum of five thousand three hundred and sixty-seven dollars and ninety-four cents ($5,367 94) never belonged to the said libellants, and has been fully paid and satisfied by the ship's owners.

This libel was for the expenses of the adjustment in San Fran-

cisco, made before any suit brought; and though filed by Annan, Embury, and Hazzard in their own names for convenience, was for the benefit of themselves and other parties, including our firm of Flint, Peabody & Co., who had claims against the ship for different portions of such expenses; the agreement being that any decree obtained was to be for the benefit of all the parties in interest according to the amounts of their respective claims and should belong to them in the like proportions.

16. The portion belonging to Flint, Peabody & Co. was for the following items of expenses paid or incurred by them at
359 the date of filing the libel:

H. W. Starr, clerk, discharging cargo of ship "Star of Hope"	210 00
J. Dwyer, cooper, coopering, do.	145 80
Flint's warehouse, 1 month's storage on 22 crates crockery	25 00
Flint, Peabody & Co's warehouse, storage 810 tons cargo warehoused for examination and appraisement, 2 months, a $1 per ton pr. mo.	1,620 00
U. S. drayman, cartage of 22 crates crockery to bonded warehouse	22 00
R. T. Reynolds, drayage and wharfage of 810 tons goods from dock to warehouse, a $1	810 00
James L. Tracey, labor in receiving and opening, assorting and overhauling cargo while under examination and discharge, 69 days, a $4 per each man as variously employed	552 00
	$3,384 80

360 Besides these, there was a further item of two thousand and thirteen 14-100, ($2,013 14,) being the fees of Mr. J. P. Haven, for making the original adjustment set up in this libel of Annan, Embury & Hazzard, and preparing the exhibits "A, B, C, and D," and the "folio volume in red." This adjustment and the exhibits were the same relied on this litigation by the prevailing parties; and the exhibits were the same submitted before the commissioner, W. H. Chevers, esq., and annexed to his report in the district court.

About the date of the appeal, we paid these fees to Mr. Haven through Mr. Chevers; that being the condition agreed on between Mr. Haven and myself for the use of the exhibits on the appeal; the same being an essential portion of the transcript on appeal.

The whole of these items (including the last) being a total of five thousand three hundred and ninety-seven dollars and ninety-four cents, ($5,397 94-100,) went into the decree of Annan, Embury & Hazzard; and this is clearly shown by the said exhibits herein. They

were subsequently included in our accounts with the ship and paid to us in full by the owners.

EDWARD P. FLINT.

Subscribed and sworn to before me, this 12 May, A. D. 1866.
SAM'L NEALL,
U. S. Com'r.

361 *Aff'd't of Casserly.*

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

E. Casserly, having been duly sworn, deposes and says:

I am the proctor for the ship "Star of Hope," and have been since the commencement of the suits in the District Court. I have carefully read the foregoing affidavit of Edward P. Flint, esq., and either from my own knowledge or from my information and belief, I can confirm the statements by him made in said affidavit from sections 1 to 14, both inclusive.

I further state that the whole matter of the entering of the decree in the court below, the amounts inserted therein, the computations necessary to ascertain the same, indeed every detail connected therewith, was arranged and controlled by and between E. P. Flint, esq., as the agent of the ship and her owners, and J. P. Haven, esq., proctor for libellants; to the latter of whom the whole business of the computations, &c., was left throughout. With these matters I had as little to do as was possible for a proctor engaged in the cause as I was from the beginning. This was in accordance with my understanding of Mr. Flint's wishes. [This was in accordance
362 with my understanding of Mr. Flint's wishes.]

It was always fully understood that the two deductions referred to in the agreed "statement of facts" were to be made from any amount found due to Annan, Talmage, and Embury, and that the decree in their favor should be for the balance if any.

I never doubted that this had been done in the entering of the decree below, certainly as to the balance of $26,177 81 due on the charter-party; and I can now think of no reason why the other deduction was not made also.

The first knowledge I had to the contrary was about or soon after the time when Messrs. Sharp & Lloyd commenced their proceedings to enforce the decree in the first and last of the above-entitled causes. Upon a most thorough and critical examination, I became and am satisfied that neither of those deductions was made to any extent whatever.

On the appeal in this court no new evidence of any kind was introduced. The appeal was heard, argued, submitted, and decided upon the transcript and its contents, including the exhibits already mentioned.

363 My recollection is that the order of this court, made ex parte on or about May, 1865, allowing execution to issue was, the

next day or a few days afterwards, by consent of Mr. Sharp, deemed to be vacated for the purpose of my opposition to the application for execution. What is certain is that the subsequent proceedings in the court, pro and con, running through several months, were upon the basis and understanding all around that the orders allowing execution should be deemed as never made; and that the whole matter was open for discussion and decision, as though such order had never been entered.

E. CASSERLY.

Subscribed and sworn to [be] before me, this 12th day of May, A. D. 1866.

S. NEALL, *U. S. Com.*

364 *Aff'd't of Cazneau.*

NORTHERN DISTRICT OF CALIFORNIA.
City and County of San Francisco, ss:

Thomas N. Cazneau, having been duly sworn, deposes and says:

I am by profession an adjuster of marine averages, of twenty-seven years standing in the ports of New York and San Francisco; and for upwards of ten years last past, in the latter part have been in active business in my profession.

At the request of E. P. Flint, esq., I have made a very thorough examination of the exhibits "A, B, C, and D," and a "folio volume in red," marked "statement of general and particular average," in the case of the ship "Star of Hope," received by me from E. Casserly, esq., the proctor of the ship, which, I am informed and believe, are the exhibits in the above-entitled libels and contain the adjustment of the average and the schedules connected therewith in the matter of the ship "Star of Hope."

The results of my examination, which was made in connection with the "agreed statement of facts" in this case, are as follows:

I find that the sum of twenty-six thousand one hundred and seventy-seven dollars and eighty-one cents ($26,177 81,) balance due on the charter-party by the libellants Annan, Talmage, and Embury, provided in the "agreed statement of facts," to be deducted from any decree to be entered in their favor, has not been deducted, nor any part thereof.

365

I also find that the amount of moneys paid and secured to be paid in San Francisco to said Annan, Talmage, and Embury, by the various consignees of the cargo delivered here as their respective shares of the average, has not been deducted nor any part thereof, from the decree in their favor, as provided in the "agreed statement of facts."

I also find that after deducting from the decree of Annan, Talmage, and Embury the sum of twenty-six thousand one hundred and seventy-seven dollars and eighty-one cents ($26,177 81) due by them on the charter-party, and making some other deductions and corrections shown by the exhibits, but without deducting anything for moneys paid or secured to be paid to them in San Francisco by consignees of

cargo in general average, the true amount of their decree is four thousand two hundred and ninety-one dollars and thirteen cents ($4,291 13) instead of twenty-six thousand four hundred and sixty-nine dollars, as the decree now stands.

I further state that the foregoing errors in the said decree
366 are errors of computation, clearly apparent upon the said Exhibits "A, B. C, D," and the "folio volume in red," and perfectly capable of being amended thereby. Also that the accuracy of these results is shown by the balance struck by me, upon the said examination, which balance is exact and true.

I further state as to the decree of Annan, Embury, and Hazzard for $10,719 27, that I have examined section 16 and 17 of the affidavit preceding of E. J. Flint, esq., and that the items therein mentioned, amounting to $5,397 94, went into and form a part of the said decree; and that this clearly appears from the said exhibits.

THOS. N. CAZNEAU.

Subscribed and sworn before me this 12th May, A. D. 1866.

S. NEALL, *U. S. Com.*

Endorsed: Filed May 12, 1866. Geo. C. Gorham, clerk. Pr. S. Neall, deputy cl'k.

367 Circuit Court of the United States in and for the northern district of California.—In admiralty.

Order to show cause.

1. SHIP STAR OF HOPE, HENRY PEARSONS, claimant, appell't,
vs.
WM. C. ANNAN *et als.*, libellants, respondents.

2. SAME APP'T
vs.
JESSE SAWYER, resp't.

3. SAME APPELL'T
vs.
ADRAIN & STORY, resp't.

4. SAME APP'T
vs.
J. D. WING, resp't.

5. SAME APP'T
vs.
J. M. POMMARES, resp't.

6. SAME APP'T
vs.
CROSBY & DIBBLEE, resp't.

12. SAME APP'T
vs.
BOND & HALL, resp't.

7. SAME APP'T
vs.
D. R. PROVOST, resp't.

8. SAME APP'T
vs.
DAVID H. BURKE, resp't.

9. SAME APP'T
vs.
BENJ. F. NESBIT, resp't.

10. SAME APP'T
vs.
MOORE & FOLGER, resp't.

11. SAME APP'T
vs.
PARK & WHITE, resp't.

14. SAME APP'T
vs.
J. T. HALLOCK *et al.*, resp't.

15. SAME APP'T
vs.
JAMES PATRICK *et al.*, resp't.

16. SAME APP'T
vs.
JOSEPH N. EMBURY *et al.*, respondent.

368 13. SAME APP'T
vs.
JONES & STEVENS, resp't.

In the above-entitled causes, on reading and filing the affidavits of Wm. H. Chevers, Cutler McAllister, C. Temple Emmet, Edward P. Flint, Thomas N. Cazneau, and Eugene Casserly:

Ordered, that Messrs. Martin W. Brett, James E. Brett, Elijah Houghton, and J. E. Miller, claiming as the assignees of the said

libellants, Annan, Talmage, and Embury, and Annan, Embury, and Hazzard, in the first and last of the above-named causes respectively, and their proctors, Messrs. Sharp & Lloyd, show cause before this court on the 2nd Tuesday of June next, on the opening of court on that day in this city, as follows:

Why the said exhibit annexed to the affidavit of said Eugene Casserly, and described in the said affidavits as the "folio volume in red" should not be annexed to the transcript of the record on appeal herein from the District Court of the United States for the northern district of California as, and for, and in place of the exhibit of which it is a copy, and which has been removed or lost from said
369 transcript on file in this court, and since the same was filed herein.

Also, why the decree, in favor of the libellants, Annan, Talmage, and Embury should not be amended by reducing the amount thereof to $4,291 13, or be declared fully satisfied and paid.

Also, why the decree in favor of the libellants, Annan, Embury, and Hazzard should not be declared satisfied as to $5,397 94 thereof, alleged to have been paid by or for the claimant and appellant herein.

Or, why such other and further relief should not be granted in the premises, as may be meet.

And, that said motion may be made upon the said affidavits and exhibit, and upon the records and minutes of this court, and the said transcript and papers on file in this court; and upon the papers on file in the said District Court.

And in the meantime and until further order, that all proceedings on the execution heretofore issued herein on application of Messrs. Sharp & Lloyd, proctors, &c., and otherwise herein be stayed.

San Francisco, May 14, 1866.

370 (Signed) OGDEN HOFFMAN, *Dist. Judge.*

Circuit Court U. S., northern district of California.

TENTH CIRCUIT, *ss:*

I, George C. Gorham, clerk of the Circuit Court of the United States, district and circuit aforesaid, do hereby certify that the foregoing three pages contain a true and correct copy of the original order made in the within entitled cause, on the 12th day May, 1866, and filed on the same day in my office.

Witness my hand and the seal of said circuit court this 14th day of May, A. D. 1866.

[SEAL.] GEO. C. GORHAM, *Clerk.*
By S. NEALL, *D. C.*

[5-ct. int. rev. stamp, cancelled.]

SAN FRANCISCO, *June* 8, '66.

371 Messrs. SHARP & LLOYD, *Proctors &c.:*

GENTLEMEN: Within is a copy of an order of this court duly made May 14th, 1866.

Yours, &c.,

E. CASSERLY,
Proctor for C'm't and App'l't.

Endorsed: Filed May 18, 1866.

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373 In the Circuit Court of the United States for the northern district of California.

WILLIAM C. ANNAN *et al.*, appellees,
vs.
SHIP "STAR OF HOPE," HERRY PEARSONS, claimant, and appellant. } In admiralty.

JESSE SAWYER
vs.
SAME.

ADRAIN AND STORY
vs.
SAME.

J. D. WING
vs.
SAME.

J. M. POMMARES *et al.*
vs.
SAME.

MOORE AND FOLGER
vs.
SAME.

CROSBY AND DIBBLEE
vs.
SAME.

D. R. PROVOST
vs.
SAME.

DAVID H. BURKE
vs.
SAME.

BENJA. F. NESBITT
vs.
SAME.

JONES AND STEVENS
vs.
SAME.

374 BOND AND HALL
vs.
SAME.

JAMES PATRICK *et al.*
vs.
SAME.

J. Y. HALLOCK *et al.*
vs.
SAME.

PARK AND WHITE
vs.
SAME.

JAMES W. EMBURY
vs.
SAME.

Affid't of Ham.

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

Joseph T. Hamm being duly sworn, says: I have been an average adjuster about 28 years; and altho' not all that time actually engaged in the business, am perfectly conversant with all its principles and details. I was employed in the latter part of 1856 by Messrs. W. C. Annan & Co. and Joshua P. Haven, to assist in the adjustment of the average in the matter of the ship "Star of Hope," and was so employed from the time the papers were first placed in the hands of Mr. Haven until the adjustment was completed. I was also employed to make the accounts on which the several libels were instituted against the ship, including those of Annan, Talmadge, and Em-
375 bury, and Annan, Embury, and Hassard; am thoroughly acquainted with the calculations and computations in the original adjustment of average or book called the "folio volume in red," as also with those in the original exhibits, which were filed in the District Court, marked, respectively, "A, B, C, D;" all those calculations and computations, without exception, were made by me; the said original exhibits "A, B, C, D," filed in the U. S. District Court as aforesaid, were made by me, and are in my handwriting.

I have often seen and carefully examined the said original papers which were filed in the United States District Court in the above-entitled cause against the ship "Star of Hope," including the book mentioned as the "folio volume in red;" have seen and examined them on several occasions in the clerk's office of the District Court; am well acquainted with the "folio volume in red," and the exhibits "A, B, C, D," and with their contents; that it would be impossible, without the "folio volume in red," or a copy thereof, or of some papers which were never filed in the said cause, to ascertain how the commissioner arrived at the figures for the decrees in the first fifteen of the libels, (including that of Annan, Talmadge, and Embury,) nor without said papers could any average adjuster or accountant approximate to the said amounts by several thousands of dollars;
376 it would also be impossible, without the aforesaid volume in red, or schedule "B," to determine the manner in which the commissioners obtained the amount for the decree in libel 16.

I have carefully examined the transcript and papers filed in the Circuit Court of the U. S., including the "red books," lettered, "statement of general average, &c." which is partly in my handwriting; that the last-named red book was not copied from the original "folio volume in red," which was filed and used in the said United States District Court in evidence, nor is it a complete or perfect copy of said "folio volume in red;" that the exhibit, marked respectively "A, B, C, D," are not the originals which were filed in the said District Court, and are not in my handwriting; the yellow paper cover in which they are contained is, I am informed and believe, the same to which the original exhibits were attached.

JOS. T. HAMM.

Sworn to and subscribed before me, this 12 June, A. D. 1866.

S. NEALL, *U. S. Com.*

Affd't of Hosmer.

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

Charles Hosmer, being duly sworn, says: That he has been
377 the attorney in fact of Messrs. Brett, Son & Co., the assignees of William C. Annan, James M. Embury, and George A. Hassard, the libellants, in the first and sixteenth libels in the above-entitled actions, and has so acted for the said parties in the said cases for about five years last past; that no parts of the amount due on the decrees rendered in said libels has been paid to affiant or said assignees; and that he is informed and believes that the full amounts of the decrees in said actions on said libels Nos. 1 and 16, is still due and unpaid.

CHAS. HOSMER.

Subscribed and sworn to before me, this 12th day of June, A. D. 1866.

GEO. C. GORHAM,
U. S. Com'r.

Aff'd't of Mowe.

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

George W. Mowe, being duly sworn, says: That he is the attorney in fact of Messrs. Bret, Son & Co., the assignees of William C. Annan, James W. Embury, and George A. Hassard, the libellants, in the first and sixteenth libels in the above-entitled actions, and has so acted for some months past for the said parties in the said cases; that no part of the amounts due on the decrees rendered in said libels has been paid to affiant or said assignees; and that he is informed
378 and believes that the full amounts of the decrees in said actions on said libels Nos. 1 and 16, are still due and unpaid.

GEO. W. MOWE.

Subscribed and sworn to before me, this 12th day of June, A. D. 1866.

GEO. C. GORHAM,
U. S. Com'r.

Aff'd't of Sharp.

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

Sol. A. Sharp, being duly sworn, says: He is and has been, for more than two years last past, a member of the law firm of Sharp & Lloyd, the proctors for the libellants in the aforesaid libels Nos. 1 and 16; that affiant has had the entire charge of the matter as proctor since the substitution of his said firm as proctors in said libels; that he has read the affidavits of E. P. Flint and E. Casserly, esq'rs, on file herein; that it is true, as stated therein, that negotiations for compromise have been pending for about a year past, but those gentlemen are mistaken as to the basis of facts upon which said negotiations proceeded, or were had on the part of those representing Messrs. Bret, Son & Co., the assignees of the libellants in said libels Nos. 1 and 16; that the basis of facts governing affiant in said negotiations were mainly those appearing from the decree herein, coupled
379 with an anxious desire to close the matter, and realize the money without future litigation. In relation to the order for execution, and the execution referred to in said affidavits, it is true, as affiant believes, that said order was set aside upon the suggestion that Mr. Casserly desired to oppose the same, but there was no understanding that this should preclude the libellants, or their assignees, in libel Nos. 1 and 16, from having an execution issued at any time, as was their right, by applying to the clerk.

That negociations were unnecessarily delayed, as affiant believed, and he did apply for and obtain, on or about the 7th day of March last, an execution; and affiant is confident that soon thereafter he informed Mr. Flint of the same.

That thereby negociations were quickened, and on or about the 9th day of April last, affiant and Mr. Flint agreed upon a cessation or stay of proceedings for thirty-five days, to enable him to correspond with his principals; that said time has elapsed, and affiant has had no answer from Mr. Flint except the rule served upon him on this application. Affiant is informed and believes no part of said decrees in libels 1 and 16 has ever been paid.

SOL. A. SHARP.

Sworn to and subscribed before me, this 12th June, A. D. 1866.
S. NEALL, *U. S. Com.*

Endorsed: Filed June 12, '66. Geo. C. Gorham, clerk.

380 U. S. Circuit Court, district of California.

Aff'dav't of Mowe.

W. C. ANNAN *et al.*
vs.
THE "STAR OF HOPE."

DISTRICT OF CALIFORNIA, *ss:*

George W. Mowe, being duly sworn, deposes that he is acquainted with the firm of Brett, Son & Co., and the persons composing said firm; that they are respectable merchants doing business in New York city, and are represented to be, and are in fact, as deponent is informed and believes, persons of great wealth.

GEO. W. MOWE.

Subscribed and sworn to before me, this 2nd day of October, A. D. 1856.
[SEAL.] JOHN GORMAN.
Notary Public.

Endorsed: Filed Oct. 4, '66. Geo. C. Gorham, clerk, by S. Neall, D. C.

381 In the Circuit Court of the United States for the districts of California, in and for the northern district.

Appeal in admiralty.

1. THE SHIP "STAR OF HOPE," HER TACKLE, apparel, furniture, &c., Henry Pearsons, claimant of the said ship Star of Hope, her tackle, &c., and appellant,
vs.
WM. C. ANNAN, WM. H. TALMAGE, and JAMES W. Embury, libellants and appellees.

2. SAME APPELLANT
vs.
JESSE SAYWER, libell't and appellee.

3. SAME APPELLANT
vs.
ADRIAN & STORY, libellants and appellees.

4. SAME APPELLANT
vs.
J. D. WING, libellant and appellee.

5. SAME APPELLANT
vs.
J. M. POMMARES & Co., libellants and appellees.

6. SAME APPELLANT
vs.
CROSBY & DIBBLEE, libellants and appellees.

7. SAME APPELLANT
vs.
D. R. PROVOST, libellant and appellee.

382 8. SAME APPELLANT
vs.
DAVID H. BURKE, libellant and appellee.

9. SAME APPELLANT
vs.
BENJ. F. NESBITT, libell't and appellee.

10. SAME APPELLANT
vs.
MOORE & FOLGER, libell'ts and appellees.

11. SAME APPELLANT
vs.
PARK & WHITE, libell'ts and appellees.

12. SAME APPELLANT
vs.
BOND & HALL, libell'ts and appellees.

13. SAME APPELLANT
vs.
JONES & STEVENS, libell'ts and appellees.

14. SAME APPELLANT
vs.
J. Y. HALLOCK & Co., libellant and appellee.

15. SAME APPELLANT
vs.
JAMES PATRICK & Co., libell'ts and appellees.

16. SAME APPELLANT
vs.
JAMES W. EMBURY, WM. C. ANNAN, and George Hazzard, libellants and appellees.

Aff'd't of Flint.

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

383 Edward P. Flint, having been duly sworn, says: I know Joseph T. Hamm, who is mentioned in the affidavit of Eugene Casserly, esquire, as the person who prepared the "folio volume in red," filed in this case May 12th, 1866.

At Mr. Casserly's suggestion I employed Mr. Hamm, on behalf of the ship and owners, to prepare the said "folio volume in red," now on file herein, in lieu of the original "folio in red," which, as I am informed and believe, was a part of the transcript on appeal herein, but has been lost since the transcript came into this court; and also four other exhibits, in lieu of Exhibits "A," "B," "C," and "D," which also formed a part of the transcript, and were supposed to be lost at the time of Mr. Hamm's employment, but have since been found.

The said "folio volume in red," and the four other exhibits to be prepared by Mr. Hamm, and to be complete and exact counterparts of the original "folio volume in red," and the Exhibits "A,"
384 "B," "C," and "D," respectively, as the same were in the transcript on appeal in this court. Such was his agreement when I employed him. He either produced, or said he had still in his hands, the written book of the "adjustment," and I think also of the four exhibits from which the original folio volume in red, and Exhibits "A," "B," "C," and "D," were themselves transcribed in the first place.

Mr. Hamm furnished to Mr. Casserly the "folio volume in red," now on file herein, and also four exhibits, "A," "B," "C," and "D," still in Mr. Casserly's possession, distinctly and explicitly as and for the complete and exact counterparts of the said original "folio" volume in "red," and said Exhibits "A," "B," "C," and "D," respectively.

And on this footing, and no other, I paid Mr. Hamm his fee for his services—one hundred dollars—in the preparation of said counterparts.

During the negotiations for a settlement (spoken of in my former affidavit) between Mr. Sol. A. Sharp, as proctor of Brett, Son & Company, claiming as assignees of the decrees of Annan, Talmage
385 & Embury, and of Annan, Embury & Hazzard, and myself acting for the ship and her owners, we had frequent interviews for the discussion of details, and especially of the amount, if any, to

be paid on the first-named decree, in view of the alleged omission to make from it the agreed deductions.

At some of these interviews Mr. Hamm was present. At one of them in particular, and the most recent and important, held at the office of Thomas N. Cazneau, esq., in this city, he took a prominent part in support of the views of Mr. Sharp and his clients, having came there in their interest, though he had been previously employed and paid on behalf of the ship. At that interview Mr. Sharp and Mr. Hamm produced and relied on written memoranda and calculations, taken from the "folio volume in red," now on file herein. Then, and on all other occasions during the negotiations, the "folio volume in red" was consulted, referred to, and relied on by
386 both parties, and not less by Mr. Sharp and Mr. Hamm, than by Mr. Casserly and myself, as being in all respects a complete and exact counterpart or duplicate of the original "folio volume in red." In all calculations and questions as to amounts or otherwise, the identity of its contents with those of the original volume was assumed. On such and all other occasions the present book was most freely submitted to Messieurs Sharp and Hamm for the fullest examination, at times for weeks together; yet on no occasion was any intimation ever made by either of those gentlemen that the present book was wanting in anything to make it a perfect counterpart of the former volume.

At none of these interviews, nor on any other occasion, was it ever claimed, or even intimated by Mr. Sharp or Mr. Hamm that the deduction of $26,177 81, due by Annan, Talmage & Embury on the charter-party, had ever been made in entering up their
387 decree. All ever claimed by them was, that a certain amount of freight not earned on the goods sold at Montevideo, and which had been brought into the adjustment, should be allowed to Annan, Talmage, and Embury, as a sort of equity in their favor against the balance due on the charter-party.

About the time when Mr. Hamm furnished the counterparts of the "folio volume in red," and of the other four Exhibits "A," "B," "C," and "D," or shortly afterwards, he became very urgent for his fee, and I paid him. Not a great while afterwards I had good cause to believe that he had become employed, or in some way interested pecuniarily against the ship and on behalf of Brett, Son and Company, the clients of Mr. Sharp.

I was, however, utterly surprised to hear from Mr. Casserly, a few days ago, that in Mr. Hamm's affidavit, used by Mr. Sharp on the motion herein, he undertook to state that the volume in
388 red furnished by him was not "a complete or perfect copy" of the former volume in red, as this was directly the contrary of his agreement and his statements made by him to me, and of my entire understanding with him throughout.

EDWARD P. FLINT.

Sworn and subscribed before me, this 11th day of July, A. D. 1866.

S. NEALL, *U. S. Com'r.*

Aff'd't of Casserly.

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco:

Eugene Casserly having been duly sworn, says:

I have read over the preceding affidavit of Edward P. Flint, esq., and, from my own knowledge or information, I can confirm the
389 statements therein contained. I was present at most, if not all, of the interviews mentioned in paragraph 5 of his affidavit, including that at Mr. Cazneau's office, which was one of the latest in time, and the most protracted and important in its character.

Shortly after I first saw Joseph T. Hamm in reference to supplying the "folio volume in red," lost from the record on appeal in this case, and also the other Exhibits "A," "B," "C," and "D," then supposed also to be lost, he informed me that he still had in his possession the identical original written book of the adjustment, and I think also of the four Exhibits "A," "B," "C," and "D," from which the former "red volume" and the other four exhibits were copied. According to my best recollection he exhibited to me, at my office, this original book of the "adjustment," and it appeared to me to be what he represented.

I stated distinctly to Mr. Hamm that I wanted the "volume
390 in red" and the other four exhibits, to supply the record on appeal in this court, and that complete identity of contents was requisite for my purpose. He undertook unhesitatingly and distinctly to reproduce from the original in his possession the "volume in red," and also the other four exhibits, and that they should be exact and complete counterparts of the former book in red and Exhibits "A," "B," "C," and "D."

In the preparation by Mr. Hamm of these counterparts, a good deal of the copying was done by my clerks at my office, under his direction, from the original furnished by him, and everything was carefully compared there.

When Mr. Hamm delivered to me the present "folio volume in red" and the four Exhibits "A," "B," "C," and "D," he delivered them to me as the exact and complete counterparts of the former volume in red, and of the other four exhibits.
391 Most certainly he stated to me they were such counterparts more than once in the most explicit manner.

Within a few days I have, alone and in company with Mr. Cazneau, examined the present folio volume in red by itself, and also by comparison with the Exhibits "A," "B," "C," and "D," which, though supposed to be lost, have been found, and are now a portion of the record on appeal in this court. Having thus refreshed my memory in the matter, I have no longer any doubt of the entire accuracy of the said folio volume as a full and true counterpart or duplicate of the folio volume in red, sent up on appeal to this court with, and as a part of, the transcript of the record. A few immaterial clerical errors of obvious correction are mentioned in
392 the affidavit of Mr. Cazneau hereto annexed. I have also

caused to be made in my office a careful comparison and examination of the counterparts of Exhibits "A," "B," "C," and "D," (furnished me by Mr. Hamm,) with the said exhibits now in the record on appeal in this court. and am informed and believe that the said counterparts made by him from the exhibits in his possession, as aforesaid, at a time when the exhibits in the record were supposed to be lost, are exact and true, except as to a very few immaterial clerical errors. On this point I refer to the affidavit of Mr. John P. Poole, law clerk in our office, by whom such examination and comparison was made.

The clerks mentioned in the preceding paragraph (4) had both quitted my employment several months before the order to show cause in this case. One of them, Mr. T. J. Owens, had gone to the State of Nevada before the motion came on. The other, Mr. Charles F. Gompertz, has made an affidavit, which is annexed hereto.

393 Since the foregoing portion of this affidavit was written out, one of the clerks, Mr. Owens, mentioned in the last preceding paragraphs, has returned to town. I have not thought it necessary to take his affidavit, as it would be merely a general corroboration of that made by Mr. Gompertz, which is annexed.

I further state that, except the facts and data contained in the "agreed statements of facts," and the exhibits, including the "folio volume in red," no proof of any kind was offered at any stage of the above entitled causes, either in the court below, or in this court, nor was any modification made of the data and figures contained in the said exhibits, or authorized to be made with my knowledge or consent, or, so far as I was aware, during the pendency of the causes in the court below, or in this court.

E. CASSERLEY.

Sworn and subscribed before me this 20th July, 1866.
S. NEALL, *U. S. Com'r.*

394 *Aff'd't of Cazneau.*

NORTHERN DISTRICT OF CALIFRONIA,
City and County of San Francisco, ss:

Thomas N. Cazneau, having been duly sworn, says:

At Mr. Casserly's request I have carefully examined and compared, in company with him and separately, the "folio volume in red," filed in this case on the motion herein, with the four Exhibits, "A," "B," "C," and "D," which are a portion of the transcript on appeal in this court.

The results of this examination and comparison are as follows:

The four Exhibits, "A," "B," "C," and "D," are indentical as to their contents respectively, with the "volume in red," from page 3 to page of that volume, both inclusive, showing evidently that the said exhibits were transcribed from the original "volume in red," or from the same originals.

395 I noted a few discrepancies in the "volume in red," all of which were merely clerical and immaterial; such as the transposition of a few entries from one place to another, though under the same head; also, and omission in one place to extend into the outside right hand column, the result of a line of figures, which, however, furnish the correction, the footing of the outside column being also right; and in another place an error of one cent in an addition, which, however, does not affect the subsequent result.

Besides the contents of the Exhibits, "A," "B," "C," and "D," the "volume in red" contains from page to page inclusive, under the head "apportionment," a statement of the amount to be contributed in the adjustment by the several interests according to their contributary values, as follows: 1. The vessel, freight, and cargo; and 2. The different portions or shipments of the cargo, as covered by the several bills of lading, consigned to all the
396 shippers respectively, showing the amount payable in the adjustment by each shipper on the goods included in the several bills of lading. This "apportionment" supplies, with the preceding contents of the book, every figure and all the data necessary to make up and state a complete adjustment of the average, and of course the amounts for which the ship would be liable in this suit to the respective libellants.

All that portion of the "volume in red" which precedes the "apportionment," and corresponds with the contents of Exhibits "A," "B," "C," and "D," contains the data for making the "apportionment," and the "apportionment" as made in the "volume in red" is the exact result of those data. In other words, the Exhibits "A," "B," "C," and "D," remaining in this case as a part of the transcript on appeal, compare exactly as to contents with the first portion of the "volume in red," and they also supply the data for the remaining part, namely, the "apportionment," which, tested by such
397 data, is entirely correct.

The result is, that the "volume in red" is and must be a true and complete counterpart of the former volume in red, in this case containing the original adjustment and statement of the average.

In my judgment, after a most careful and thorough examination twice made by me, it cannot be otherwise.

At the date of my first connection with this case, the negotiations for a settlement betweent Mr. Sharp and Mr. Flint were pending. I had several conversations with Mr. Hamm as to the error in the decree of Annan, Talmage, and Embury. I was present at two interviews at least in my office, between Mr. Flint and Mr. Sharp. At the most recent of these, Mr. Hamm was present acting in conjunction with Mr. Sharp, on behalf of the latter's clients. This is the interview particularly mentioned by Mr. Flint in his affidavit pre-
398 fixed, at paragraphs 5 and 6. From my personal knowledge, I can corroborate the statements as to that interview. I had several conversations besides with Mr. Hamm, in more than one of which he stated distinctly that the present volume in red had been prepared by him or under his direction; and that it was an exact copy or counterpart of the former volume in red.

Throughout the entire negotiations, whenever I was present, the same thing was sometimes expressly said, and more frequently assumed, with respect to the present volume, among all the parties. I never heard any intimation to the contrary, and have been greatly surprised to learn that Mr. Hamm's affidavit denies the completeness of the volume as a counterpart of the former volume in red.

It is also true as stated by Mr. Flint, that at no time was it
399 claimed or intimated by Mr. Sharp or Mr. Hamm, that the balance due by Annan, Talmage, and Embury, on the charter party had ever been deducted in entering up their decree. All that was ever claimed by them was as stated by Mr. Flint in his affidavit, paragraph 6, that a certain sum should be allowed Annan, Talmage, and Embury, on account of freight not earned on the goods, sold at Montevideo. This, however, was clearly inadmissible, as the whole of such freight was brought into the "adjustment," and contributed for and raised in the "average" in the regular manner.

I can think of nothing which could have been added to the present volume in red, to make it complete as a statement of the "average" in the case, except a "settlement" at the end; that is, a summary
400 statement of the amounts which the several parties would have been entitled to receive respectively. My own practice has been to add such a settlement in my adjustments of average. It was not Mr. Haven's practice.

The making of said "settlement" is a simple process of addition and substraction upon the figures contained in the preceding pages of the book in this case.

THOS. N. CAZNEAU.

Subscribed and sworn to before me [me] this 16th July, A. D. 1866.

S. NEALL, *U. S. Com.*

Affid't of Poole.

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

John Pascoe Poole, having been duly sworn, says:

I am engaged in the law office of Mr. Casserly; and at his
401 request I made yesterday, with the help of another person, a full and careful examination and comparison (as mentioned in his affidavit prefixed) of the Exhibits "A," "B," "C," and "D," which belong to the transcript herein. with four exhibits purporting to be exact counterparts thereof. I found the latter to be in all respects such counterparts, except as follows:

Exhibit "A," last page, "P. L. 3-3," should be "P. L. 2-3."
Exhibit "B," 2nd page, "90 fins," should be "9 fins."
Exhibit "B," 5th page, "2-12 apples," should be "3-12 apples."
In all others respects the contents of the two sets of exhibits are

perfectly identical. The errata noted do not, in any respect, affect the figures as extended, or the footings.

JOHN P. POOLE.

Sworn and subscribed before me, this 11 July, A. D. 1866.
S. NEALL, *U. S. Com'r.*

402 *Affidavit of Gompertz.*

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

Charles F. Gompertz, having been duly sworn, says:

I know Joseph T. Hamm, and became acquainted with him in the matter of the preparation, by him, for Mr. Casserly, of a certain "folio volume in red," and four (4) exhibits "A," "B," "C," and "D," as and for the exact counterparts of the former "volume in red," and the exhibits "A" to "D," at that time understood to be lost from the record on appeal in this court.

I was then a clerk in the law office of Mr. Casserly, in this city, and did the writing of the counterparts, schedules "A," "B," and "C," and of a portion of the present "volume in red," headed—"Freights on goods sold, in order to raise funds," and of the preceding page. This writing I did under the immediate direc-
403 tions of Mr. Hamm, copying from certain books produced by him, which he said, and which I understood, were the originals from which the missing volume and exhibits had been originally prepared by himself.

Schedule "D" was written by Thomas J. Owens, also a clerk in Mr. Casserly's office, and under Mr. Hamm's directions, copying from the original furnished by him. Mr. Owens, also, wrote in the same way a portion of the red book, including the "appraisement of the cargo and sales in Montevideo, and value of same in San Francisco."

The remainder of the red book, not written by me or Mr. Owens, is in the handwriting of Mr Hamm.

The counterparts were carefully compared and examined in Mr. Casserly's office, with the said orignal books produced by Mr. Hamm first, by Mr. Owens and myself, and afterwards by us with Mr. Hamm.

404 I know that it was distinctly stated by Mr. Hamm, more than once, to me or in my hearing, that the present "volume in red," and the said exhibits or schedules "A" to "D" were true and complete counterparts, respectively, of the former "volume in red," and the exhibits "A" to "D" having been copied from the same original books in his possession.

I also know that this was the object of the whole proceeding in the office. Mr. Casserly's purpose was to supply the missing portions of the record in this court, with a view to further proceedings herein; and this purpose could not be accomplished, unless the papers prepared by Mr. Hamm were true and complete counterparts of such missing portions.

I distinctly remember hearing Mr. Hamm say, that he was the only person who had the original books, from which the missing book and exhibits had been copied.

CHARLES F. GOMPERTZ.

Subscribed and sworn to before me, this 12th day of July, A. D. 1866.

GEO. C. GORHAM,
U. S. Com'r.

405 At a stated term of the Circuit Court of the United States of America, for the district of California, held at the court-room, in the city of San Francisco, on Monday the 25th day of June, in the year of our Lord one thousand eight hundred and sixty-six.

Present: The honororable Stephen J. Field, circuit judge.

Order.

SHIP "STAR OF HOPE," &c.,
vs.
W. C. ANNAN *et al.*

And now come the said parties, by their respective proctors, and argument having been heard in part, it is ordered that the further hearing be postponed until to-morrow, at 11½ o'clock.

A true copy from the minutes.

Attest:

GEO. E. WHITNEY, *Clerk.*

406

407 At a stated term of the Circuit Court of the United States of America, for the district of California, held at the court-room, in the city of San Francisco, on Saturday the 8th day of September, in the year of our Lord one thousand eight hundred and sixty-six.

Present: Full bench.

Order.

SHIP "STAR OF HOPE," &c.,
vs.
W. C. ANNAN *& al.*

And now the said parties appearing as before, the argument upon the motion herein pending is submitted and taken under advisement by the court.

A true copy from the minutes.

Attest:

GEO. E. WHITNEY, *Clerk.*

408

409 In the Circuit Court of the United States in and for the northern district of California.—In admiralty.

Order.

Ship "STAR OF HOPE," HENRY PEARSONS, claimant, appellant,
vs.
W. C. ANNAN *et als.*, libellants and respondents.

SAME APPELLANT
vs.
JESSE SAWYER, respondent.

SAME APPELLANT
vs.
ADRIAN & STORY, respondent.

SAME APPELLANT
vs.
J. D. WING, respondent.

SAME APPELLANT
vs.
J. M. POMMARES, respondent.

SAME APPELLANT
vs.
CROSBY & DIBBLEE, respondent.

410 SAME APPELLANT
vs.
D. R. PROVOST, respondent.

SAME APPELLANT
vs.
DAVID H. BURKE, respondent.

SAME APPELLANT
vs.
BENJ. F. NESBITT, respondent.

SAME APPELLANT
vs.
MOORE & FOLGER, respondents.

SAME APPELLANT
vs.
PARK & WHITE, respondents.

SAME APPELLANT
vs.
BOND & HALL, respondents.

SAME APPELLANT
vs.
JONES & STEVENS, respondents.

SAME APPELLANTS
v.
J. Y. HALLOCK *et als.*, respondents.

411 SAME APPELLANT
vs.
JAMES PATRICK *et als.*, respondents.

SAME APPELLANT
vs.
JOSEPH W. EMBURY, *et als.*, respondents.

In the above-entitled causes an order having been heretofore, on May 14, 1866, duly made by Hon. Ogden Hoffman, district judge, (acting as circuit judge,) on motion of E. Casserly, esq., proctor of said claimant (and appellant) H. Pearsons, and on certain affidavits in said order mentioned and then and there filed in this court, that Messrs. M. W. Brett, &c., claiming as the assignees of the said libellants, Annan, Talmage, and Embury, and Annan, Embury, and Hazzard, in the first and last of said causes respectively, and their proctors, Messrs. Sharp & Lloyd, should show cause before this court, on the second Tuesday of June, then next ensuing, among other things, as follows:

Why a certain exhibit annexed to the affidavit of E. Casserly,
(one of said affidavits in said order mentioned,) and described
412 in said affidavits as the "folio volume in red," should not be
annexed to the transcript of the record on appeal herein, from the District Court of the United States for the northern district of California, as and for and in place of the exhibit of which it is a copy, and which has been removed or lost from said transcript on file in this court and since the same was filed herein.

Also, why the decree in favor of the libellants, Annan, Talmage, and Embury, for twenty-six thousand four hundred and sixty-nine dollars should not be amended by reducing the amount thereof to four thousand two hundred and ninety-one dollars thirteen cents, or be declared fully satisfied and paid.

And why such other and further relief should not be granted as might be meet.

And afterwards, on said second Tuesday of June, 1866, the said order to show cause, and the motion thereon made on behalf of said claimant (and appellant) coming on to be heard before this court, and the same having been fully argued and heard on the said second Tuesday of June, and other subsequent days, to which the said hearing and argument were, from time to time, continued; E. Casserly,
esq., appearing as proctor for the said claimant (and appel-
413 lant) in support of said order and motion, and Messrs. Sharp
& Lloyd appearing on the other side, as proctors for said Martin A. Brett and others, claiming as assignees, &c.; and all the premises having been fully considered by this court, and it appearing to

this court that since the filing in this court of the said transcript of the record on appeal herein, a portion of said transcript has been and is lost, which portion consists of a certain exhibit referred to in said affidavits, and known in said causes as the "folio volume in red;" and that the exhibit annexed to the affidavit of said E. Casserly, and filed herein as aforesaid, and described as the "folio volume in red," is, in all respects, a true and complete counterpart of said exhibit, forming a portion of said transcript on appeal, and lost therefrom as aforesaid.

And as to so much of said order to show cause and motion thereon made, as refers to an amendment of the decree entered in favor of said libellants, Annan, Talmage, and Embury, for twenty-six thousand four hundred and sixty-nine dollars, by reducing the amount of the same to four thousand two hundred and ninety-one dollars thirteen cents, or a less sum, it appearing to the court by reason
414 of the great lapse of time since the entry of said decree, August 18, 1860, and by reason also that the alleged error in entering said decree without making the deductions therefrom, provided to be made by the agreed statement of facts, is one, if any such exists, which may be corrected on appeal in the Supreme Court of the United States, that such amendment ought not now to be made by this court:

It is ordered that the said exhibit, the "folio volume in red," annexed to the affidavit of said E. Casserly, and now on file in this court be annexed to the said transcript of the record on appeal, as a portion thereof, and as and for and in lieu of the said former exhibit also known as the "folio volume in red," heretofore forming a portion of said transcript of the record on appeal in this court.

And that the amendment moved for of said decree of Annan, Talmage, and Embury, by reducing the amount thereof as aforesaid, be denied for the reasons hereinbefore stated.

And it is further ordered, as to the other matters embraced
415 in said order, to show cause or in the motion or motions therein made during said hearing and argument by said proctor for claimant, (and appellant,) the same having been withdrawn by him, that said motion or motions be denied, without prejudice to the renewal thereof at any time hereafter, as said claimant (and appellant) shall be advised.

And that Sharp and Lloyd, esq's, proctors of said Brett and others claiming as assigns, &c., shall give to the proctors of said claimant and appellant a notice of five days of their application to this court for leave to issue execution on said two decrees of Annan, Talmage, and Embury, and of Annan, Embury and Hazzard, or either of them.

September 15th 1866.

S. J. FIELD, *Circuit Judge.*
OGDEN HOFFMAN, *Dis. Judge.*

Endorsed: Filed Sept. 15, 1866. Geo. C. Gorham, clerk, by Daniel T. Sullivan, dep. C.

416

417 At a stated term of the Circuit Court of the United States of America, for the district of California, held at the court-room in the city of San Francisco, on Saturday the 15th day of September, in the year of our Lord one thousand eight hundred and sixty-seven.

Present, the honorable Stephen J. Field, circuit judge.

SHIP "STAR OF HOPE"
v.
W. C. ANNAN *et al.*

And now Sol. Sharp, esq., proctor for certain ansignees of the libellants, moves the court for leave to issue an execution upon the decree herein, and it is ordered that the argument of said motion be set for Saturday, the 22nd instant.

A true copy from the minutes.

Attest: GEO. E. WHITNEY, *Clerk.*

418

419 At a stated term of the Circuit Court of the United State of America, for the district of California, held at the court-room in the city of San Francisco, on the 22nd day of September, in the year of our Lord one thousand eight hundred and sixty-six.

Present, the honorable Stephen Field, circuit judge.

SHIP "STAR OF HOPE," &C.,
vs.
W. C. ANNAN *et al.*

And now the motion that the assignees of certain of the libellants have leave to issue an execution upon the decree herein came on to be heard, Sol. A. Sharp, esq., appearing as proctor for said assignees, and Eugene Casserly, esq., for the claimants, and argument having been heard, the court took the said matter under advisement.

A true copy from the minutes.

Attest: GEO. E. WHITNEY, *Clerk.*

420

421 Circuit Court of the United States for the districts of California, in and for the northern district.—In admiralty.

Order.

1. SHIP STAR OF HOPE, HENRY PEARSONS, claimant and appellant,
vs.
WM. C. ANNAN *et al.*, libellant, respondents.

2. 15. THE SAME APPELLANT
vs.
LIBELLANTS IN FOURTEEN OTHER STATES, respondents.

16. THE SAME APPELLANTS
vs.
J. W. EMBURY, *et al.*, libellants, respondents.

The monition heretofore made herein on behalf of Martin W. Brett and others, claiming as assignees of the decrees in the said two libels of W. C. Annan *et al.* and of J. W. Embury, *et al.*, for
422 execution upon the said two decrees, or that the sureties on the stipulation for the appraised value of the said ship pay into court the amount of the stipulation having been fully heard and considered, Messrs. Sharp and Lloyd appearing for said alleged assignees, and Eugene Casserly, esq'r., for the said ship and claimant; and it appearing to the court that the decrees against the ship Star of Hope in all the said sixteen libels amount in the aggregate to the sum of $68,766 55-100, and that the amount of the stipulation for the appraised value of said ship is only $45,000, and that the proportion thereof applicable to the said decree of W. C. Annan *et al.* for $26,469 00 amounts to the sum of $17,320 99.

And it further appearing to the court that there has been paid by the claimants of said ship on said decree of J. W. Embury *et al.*
423 for $10,719 27, the sum of five thousand three hundred and ninety seven 94-100 dollars, leaving a balance of $5,321 33-100 due thereon a balance, and that the proportion of the amount of said stipulation applicable to said balance due on said last-named decree amounts to the sum of $3,482 21-100.

And it further appearing to the court that the alleged assignment of said decree of Embury *et al.* to the said alleged assignee, is not sufficiently proved, and that the said alleged assignees have, and claim no interest in the decrees in the other fourteen libels, or any of them.

It is therefore ordered and adjudged that the sureties in the said stipulation for the appraised value of said ship, do forthwith pay into the registry of the court for the said Brett *et al.*, as the assignees of the said decree for $26,469 00, or their proctor, the sum of seventeen thousand three hundred and twenty 99-100 dollars, ($17,320 99-100,) being the pro rata proportion of the amount of said stipulation applicable on said decree.

424 It is further ordered that upon the execution and filing herein, by said Bret *et al.*, assignees, &c., of a bond to be approved in the sum of five thousand dollars, with two or more good and sufficient sureties thereto conditioned, to save and keep harmless the said claimant of said ship, and the said sureties upon the stipulation for the appraised value thereof against the claim or claims upon said last-named decree of the said J. W. Embury *et al.*, and all per-

sons claiming, or to claim the same or any part thereof, by, through, or under them; the said sureties shall pay into the registry, &c., the said sum of $3,482 21-100.

And it is further ordered and adjudged that in default of said payments, or any of them, that execution issue therefor against the said sureties on the stipulation for the appraised value thereof.

It is further ordered and adjudged that the claimant of said ship and the sureties on the bond executed on appeal for costs herein, do pay forthwith to the clerk of this court the sum of thirty-six and 80-100 dollars, and to the proctor of said libellants the sum of five dollars, being their costs on appeal herein, and that on default of such payment execution issue therefor against the said claimant and sureties upon the bond on appeal herein.

OGDEN HOFFMAN, *U. S. Dist. Judge.*
STEPHEN J. FIELD, *U. S. Circuit Judge.*

Endorsed: Ent'd Oct. 12, 1866. Geo. C. Gorham, cl'k, by Daniel T. Sullivan, deputy

425 SHIP "STAR OF HOPE,"
vs.
W. C. ANNAN *et al.*

OCT'R 13, 1866.

Received from Flint, Peabody & Co., stipulators, $17,320 99.
Received from Flint, Peabody & Co., clerk's fees, $36 80.
Received from Flint, Peabody & Co., clerk's per cent., $3,482.

A true copy of entries in the register.
Attest:

GEO. E. WHITNEY, *Clerk.*

426

427 Circuit Court of the United States for the districts of California, in and for the northern district.

Bond.

SHIP "STAR OF HOPE," HENRY PEARSONS, claimant, appellant,
vs.
WM. C. ANNAN *et al.*, libellants, respondents.

THE SAME APPELLANT
vs.
LIBELLANTS IN FOURTEEN OTHER LIBELS, respondents.

THE SAME APPELLANT
vs.
J. W. EMBURY *et al.*, libellants, respondents.

Know all men by these presents, that we, George W. Moore, of Sacramento, and Charles Hosmer and L. L. Robinson, of San Francisco, and all of State of California, are held and firmly bound unto Henry Pearsons, the claimant of the said ship "Star of Hope," and the sureties upon the stipulation for the appraised value thereof, filed in said causes, in the sum of five thousand dollars, for
428 which payment well and truly to be made, we bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at San Francisco, the 13th day of October, A. D. 1866.

The condition of the above obligation is such, that if Messrs. Brett, Son & Co., claiming to be assignees of the decree for $10,719 27-100, rendered in said cause of J. W. Embury and others, against the ship Star of Hope, shall well and truly save and keep harmless the said Henry Pearsons, claimant of said ship, and the said sureties, upon the stipulation for the appraised value thereof, against the claim or claims of W. C. Annan, J. W. Embury, and George A. Hazzard, upon the said decree rendered in said cause of J. W. Embury *et al.*, *vs.* Ship Star of Hope, or any person or persons claiming or to claim the same or any part thereof, by, through, or under them, then this obligation shall be void, but otherwise shall be and remain in full force and virtue.

[SEAL.] GEO. W. MOWE.
[SEAL.] CHAS. HOSMER.
[SEAL.] L. L. ROBINSON.

Subscribed and sworn to before me, this 13th day of October, A. D. 1866.

DAN'L T. SULLIVAN,
U. S. Com'r.

UNITED STATES OF AMERICA,
District of California:

Personally appeared before me, this 13th day of October,
429 A. D. 1866, George W. Mowe, Charles Hosmer, and L. L. Robinson, and each for himself, and not one for the other, deposes and says that he is worth the sum of ten thousand dollars, over and above his just debts and liabilities and property exempt from execution.

GEO. W. MOWE.
CHAS. HOSMER.
L. L. ROBINSON.

Subscribed and sworn to before me, this 13th day of October, 1866.

DAN'L T. SULLIVAN,
U. S. Com'r.

Endorsed: Approved San Francisco, Oct'r 18, '66. E. Casserly, proctor of ship, and claim't (appel't.)

Filed Oct. 18, '66.

GEO. C. GORHAM, *Clerk.*

430

431 *Pow. att'y.—Brett & Co. to J. W. Embury.*

Know all men by these presents, that we, Martin W. Brett, James E. Brett, John E. Miller, and Elijah A. Houghton, composing the firm of Brett, Son & Co., of the city, county, and State of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, James W. Embury, at present in San Francisco, California, true and lawful attorney for us and in our name, place, and stead, to collect, settle, compound, adjust, arbitrate, compromise, and discharge any and all and every claim and demand which we have against the ship "Star of Hope," her owner or owners, arising out of or resulting from proceedings instituted against said vessel, her owner or owners, by William C. Annan, William H. Talmage, and James W. Embury, on 20th March, 1857, in the District Court of the United States for the northern district of California, and also out of certain other proceedings instituted in said court on 22 April, 1857, by said Annan, Embury, and George A. Hassard against said ship, her owner or owners, which claims were assigned to us on the 24th June, 1857, and for the purposes aforesaid, to execute any papers or instruments for us and in
432 our names, with or without seal; and we hereby revoke, annul, cancel, and make void a certain other power of attorney heretofore given by us to one J. P. Havens, for the same or like purposes, and authorise our present hereby constituted attorney to do such other acts as may be necessary or proper effectually to revoke the foregoing power to said Havens and to carry out the above purposes, hereby giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof we have hereunto set our hands and seals the thirty-first day of December, in the year one thousand eight hundred and fifty-eight.

[SEAL.] MARTIN W. BRETT.
[L. S.] JAS. E. BRETT.
[L. S.] JOHN E. MILLER.
[L. S.] E. A. HOUGHTON.

Signed, sealed, and delivered in the presence of—
S. J. Moss.
J. H. Crocker.

433 STATE OF NEW YORK, *County of New York, ss:*

Be it known, that on the twentieth day of January, one thousand eight hundred and fifty-nine, before me, A. B. Van Olinda, a public notary in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, personally came Martin W. Brett, James E. Brett, J. E. Miller, and E. A. Houghton, and acknowledged the within letter of attorney to be their act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

[SEAL.] A. B. VAN OLINDA,
Notary Public.

434 Know all men by these presents, that James W. Embury, of San Francisco, by virtue of the power and authority to me given in and by the letter of attorney of Martin W. Brett, Jas. E. Brett, John E. Miller, and E. A. Houghton, which is hereunto annexed, do make, substitute, and appoint Charles Hosmer, of San Francisco, Cal., as well for me as the true and lawful attorney and substitute of the said constituent named in the letter of attorney, to do, execute, and perform all and every thing requisite and necessary to be done as fully to all intents and purposes as the said constituent or I could if personally present, hereby ratifying and confirming all that the said attorney and substitute hereby made shall do in the premises by virtue hereof and of the said letter of attorney.

In witness whereof I have hereunto set my hand and seal the twenty-third day of October, in the year of our Lord one thousand eight hundred and sixty.

[L. S.] J. W. EMBURY.

Sealed and delivered in the presence of—
S. V. JOICE.

435 STATE OF CALIFORNIA,
City and county of San Francisco, ss:

On this twenty-third day of October, A. D. one thousand eight hundred and sixty, before me, E. V. Joice, a notary public in and for said city and county, duly commissioned and sworn, personally appeared the within-named James W. Embury, whose name is subscribed to the annexed instrument as party thereto, personally known to me to be the individual described in and who executed the said annexed instrument, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[SEAL.] E. V. JOICE,
Notary Public.

Endorsed: Filed Oct'r 13, 1866. G. C. Gorham, clerk, by Dan'l T. Sullivan, d. c.

436

437 In the Circuit Court of the United States within and for the district of California.

Order.

ANNAN, TALMADGE & Co. *vs.* THE STAR OF HOPE, &c. } In admiralty.

It appearing to the court that the assignees of the decree heretofore rendered in said cause of Annan, Talmadge, and others, against the ship Star of Hope, &c., did, by good and sufficient power of att'y, which is now on file herein, constitute and appoint James W. Embury their attorney in fact, with full power to collect and receive any and all monies due and to grow due on said decree, with full power of substitution; and it also appearing to the court that the said J. W. Embury, by good and sufficient substitution, did duly substitute Charles Hosmer in his place and stead as such attorney in fact; and it further appearing that under the order heretofore made herein there has been paid into court, and is now in the hands of the clerk of this court, the sum of seventeen thousand three hundred twenty and 99-100 dollars in legal tender notes of the United States of America; and it further appearing that the registry of this court does not receive U. S. legal tender notes on general account, so as to permit the drawing of checks against the funds in said registry:

Now, therefore, in consideration of the premises, it is or-
438 dered by the court here that the clerk pay over the said seventeen thousand three hundred twenty and 99-100 to the said Charles Hosmer, without depositing the same in the said registry, taking proper vouchers for the amounts so paid from the party receiving the same.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed and entered Oct. 13th, 1866. Geo. C. Gorham, clerk, by Dan'l T. Sullivan, deputy.

439 In the Circuit Court of the United States, within and for the district of California.

ANNAN, EMBURY & Co. *vs.* THE STAR OF HOPE, &c. } In admiralty.

It appearing to the court, that the assignees of the decree heretofore rendered in said cause of Annan, Embury, and others, against the ship Star of Hope, &c., did, by good and sufficient powers of att'y, which is now on file herein, constitute and appoint James M. Embury their attorney in fact, with full power to collect and receive any and all monies due, and to grow due, on said decree, with full power

of substitution; and it also appearing to the court, that the said J. W. Embury, by good and sufficient substitution, did duly substitute Charles Hosmer in his place and stead, as such attorney in fact; and it further appearing, that under the order heretofore made herein, there has been paid into court, and is now in the hands of the clerk of this court, the sum of three thousand four hundred and eighty-two 21-100 dollars ($3,482 21), in legal tender notes of the United States of America; and it further appearing, that the registry of this court does not receive U. S. legal tender notes on general account, so as to permit the drawing of checks against the funds in said registry:

440 Now, therefore, in consideration of the premises, it is ordered by the court here, that the clerk pay over the said sum to the said Cha's Hosmer, without depositing the same in the said registry, taking a proper voucher for the amount so paid.

OGDEN HOFFMAN.
Dist. Judge.

Endorsed: Filed Oct. 18, '66. Geo. C. Gorham, clerk.

440½ At a stated term of the Circuit Court of the United States of America, for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the 15th day of October, in the year of our Lord one thousand eight hundred and sixty-seven.

Present, the Hon. Stephen J. Field, circuit judge, and the Hon. Ogden Hoffman, district judge.

Order allowing appeal.

THE "SHIP OF HOPE" }
vs.
WM. C. ANNAN *et al.* }

On motion of Eugene Casserly, esq., for claimant, ordered that an appeal from the decree of this court to the Supreme Court of the United States, be and the same is hereby allowed.

Ordered that bond for costs on appeal be fixed at $500 00.

A true copy from the minutes.

Attest:

GEO. E. WHITNEY, *Clerk.*
Per A. D. SMITH, *D. C.*

440¾

441 In the Supreme Court of the United States.

Petition of appeal.

1. THE SHIP "STAR OF HOPE," her tackle, apparel, furniture, &c., Henry Pearsons, claimant of the said ship "Star of Hope," her tackle, &c., and appellant,
vs.
WM. C. ANNAN, WM. H. TALMAGE, and JAMES W. Embury, libellants and appellees.

2. SAME APPELLANT
vs.
JESSE SAWYER, libell't and appellee.

3. SAME APPELLANT
vs.
ADRAIN & STORY, libell'ts and appellees.

4. SAME APPELLANT
vs.
J. D. WING, libell't and appellee.

5. SAME APPELLANT
vs.
J. M. POMMARES & Co., libell'ts and appellees.

6. SAME APPELLANT
vs.
CROSBY & DIBBLEE, libell'ts and appellees.

7. SAME APPELLANT
vs.
D. R. PROVOST, libell't, appellee.

8. SAME APPELLANT,
vs.
DAVID H. BURKE, libell't and appellee.

442 9. SAME APPELLANT
vs.
BENJ. F. NESBITT, libell't and appellee.

10. SAME APPELLANT
vs.
MOORE & FOLGER, libell't and appellees.

11. SAME APPELLANT
vs.
PARK & WHITE, libell'ts and appellees.

12. SAME APPELLANT
vs.
BOND & HALL, libell'ts and appellees.

13. SAME APPELLANT
vs.
JONES & STEVENS, libell'ts and appellees.

14. SAME APPELLANT
vs.
J. Y. HALLOCK & Co., libell'ts and appellees.

15. SAME APPELLANT
vs.
JAMES PATRICK & Co., libell'ts and appellees.

16. SAME APPELLANT
vs.
JAMES W. EMBURY, WM. C. ANNAN, and George Hazzard, libell'ts and appellees.

443 To the honorable the Supreme Court of the United States:

The petition of appeal of the above-named claimant and appellant, Henry Pearsons, respectfully showeth that, on or about the 21st day of March, 1857, the above-named libellants, Wm. C. Annan, Wm. H. Talmage, and James W. Embury, exhibited their libel in the District Court of the United States for the northern district of California, against the aforesaid ship "Star of Hope," her tackle, apparel, and furniture, claiming over fifty dollars ($50), namely, the sum of ($44,700) forty-four thousand seven hundred dollars damages, alleged to have been sustained by them for an alleged breach of contract of affreightment, by reason of non-delivery of certain goods, &c., praying, among other things, for the reasons set forth in their libel, that process in due form of law, &c., issue against said ship, her tackle, &c., and that the said District Court would be pleased to decree the payment of the demands of said libellants in said libel mentioned, with costs, and for such other and further relief as, in law and justice, they might be entitled to receive.

That process in due form of law, and according to the course of said District Court, in cases of admiralty and maritime juris-
444 diction, issued against said ship, her tackle, &c., and the same were thereby attached.

That afterwards, on the 30th day of March, 1857, the above-named libellants, Jesse Sawyer, Benj. F. Nesbitt, Adrain & Story, Moore & Folger, J. D. Wing, Park & White, J. M. Pommares & Co., Bond & Hall, Crosby & Dibblee, Jones & Stevens, D. R. Provost, J. Y. Hallock & Co., David H. Burke, and James Patrick & Co., exhibited their several respective libels in the said District Court

against the said ship "Star of Hope," her tackle, &c., severally claiming over fifty dollars, ($50,) namely, the said Sawyer the sum of thirty-one thousand eight hundred and ninety-four dollars and seventy-four cents, ($31,894 74,) the said Nesbitt the sum of two hundred and sixty-dollars, ($260,) the said Adrain & Story the sum of three hundred and twenty-five dollars, ($325,) the said Moore & Folger the sum of five hundred and ten dollars, ($510,) the said Wing the sum of four hundred and ninety-six dollars and fifty cents, ($496 50,) the said Park & White the sum of three hundred and fifty-two dollars, ($352,) the said J. M. Pommares & Co. the sum of three hundred and twenty-six dollars and twenty-five cents, ($326 25,
445 the said Bond & Hall the sum of five hundred and eleven dollars and five cents, ($511 05,) the said Crosby & Dibblee the sum of nine hundred and ninety-nine dollars and fifty cents, ($999 50,) the said Jones & Stevens the sum of eleven hundred and twenty-one dollars and ninety-five cents, ($1,121 95,) the said Provost the sum of two thousand one hundred and ninety-six dollars, ($2,196,) the said J. Y. Hallock & Co. the sum of two thousand three hundred and thirty-eight dollars, ($2,338,) the said Burke the sum of two thousand eight hundred and eighty-seven dollars and fifty cents, ($2,887 50,) and the said James Patrick & Co. the sum of sixteen thousand three hundred and twenty-six dollars and seventy-seven cents, ($16,326 77, damages alleged to have been by them severally sustained for alleged breaches of contract of affreightment, by reason of non-delivery of certain goods, &c., respectively, praying, among other things, for the reasons in said libels respectively set forth, that process in due form of law, &c., issue against the said ship, her tackle, &c., and that the said District Court would be pleased to decree the payment of the several and respective demands of the said several libellants,
446 in their said libels respectively set forth, with costs, and such further and other relief as in law and justice they might respectively be entitled to receive; that process in due form of law, and according to the course of said District Court in cases of admiralty and maritime jurisdiction, issued against said ship, her tackle, &c., in each of said causes, and the same were thereby attached.

That afterwards, on the 14th day of April, 1857, by the order of said court, duly made on that day, Henry Pearsons, the respondent, as hereinafter mentioned, had leave to file one general answer to all the aforesaid libels; and on the 18th day of April, 1857, this appellant, the said Henry Pearsons, the respondent, filed his claim and answer to all the said libels in the said District Court, claiming the said ship, &c., as the master and lawful bailee thereof of Charles H. Coffin and B. B. Titcomb, the true, bona fide, and sole owners of said ship, and praying that the District Court would be pleased to pronounce against the said several libels, and each of them, respectively, and to decree a restitution of the said ship to him, the said respondent, and otherwise right and justice to administer in the premises, as by reference to
447 the said several libels, process, order, claim and answer may more fully appear.

That afterwards, on the 22d day of April, 1857, the above-named

libellants, James W. Embury, Wm. C. Annan, and George Hazzard, exhibited their libel against the said ship, her tackle, &c., in the said District Court, claiming over fifty dollars, namely, the sum of ($10,000) ten thousand dollars or thereabouts, for services alleged to have been rendered by them in relation to said ship, as consignees, &c., and liabilities alledged to have been by them incurred as such, on her account for an alledged adjustment of average and otherwise, praying among other things for the reasons in said libel set forth, that process issue in due form of law, &c., against the said ship, her tackle, &c., her freight, &c., and that the said court would be pleased to decree payment of the demands of said libellants in their said libel set forth and costs, and that they have such other and further relief as in law and justice they might be entitled to receive; that process in due form of law, and according to the course of said District Court in cases of admiralty and maritime jurisdiction, having been issued in said case, against the said ship, her tackle, &c., and the same having been thereby attached, this appellant, the said Henry Pearsons, on the 8th day of May, 1857, filed his plea and exception to the sufficiency of said libel, that the matters in said libel propounded do not constitute a cause of contract, civil and maritime, within the jurisdiction of said court, and his claim and answer to the said libel in the said District Court, claiming the said ship as the master and lawful bailee thereof of the said Charles H. Coffin and B. B. Titcomb, the true and bona fide and only owners of said ship, and praying among other things, that the said court would pronounce against the said libel, and condemn the said libellants in costs, and otherwise right and justice would administer in the premises.

448

That afterwards the said causes and each of them being at issue as aforesaid, such proceedings took place thereon, that on the day of 18 , a final decree was made and pronounced thereon by the said District Court, wherein it was adjudged as follows:

That the said libellants, Wm. C. Annan, W. H. Talmage, and James W. Embury, recover against the defendant the sum of twenty-six thousand four hundred and sixty-nine dollars, ($26,469,) with costs.

449

That the said libellant, Jesse Sawyer, recover from the defendant the sum of thirteen thousand six hundred and fourteen dollars and fifty-four cents, ($13,614 54-100,) with costs.

That the said libellants, Adrain & Story, recover from the defendant the sum of three hundred and seventy-five dollars and sixty-three cents, ($375 63-100,) with costs.

That the said libellant, J. D. Wing, recover from the defendant the sum of two hundred and ninety-seven dollars and ninety cents, ($297 90,) with costs.

That the said libellants, J. M. Pommares & Co., recover from the defendant the sum of two hundred and thirteen dollars and ninety-one cents, ($213 91,) with costs.

That the said libellants, Crosby and Dibblee, recover from the

defendant the sum of six hundred dollars and fifty-two cents, ($602 52,) with costs.

That the said libellant, D. R. Provost, recover from the defendant the sum of eight hundred and thirty-two dollars and eighty cents, ($832 80,) with costs.

450 That the said libellant, D. H. Burke, recover from the defendant the sum of one thousand nine hundred and fifty-three dollars and ninety-eight cents, ($1,943 98,) with costs.

That the said libellant, B. T. Nesbitt, recover from the defendant the sum of seventy-seven dollars and cents, ($77 ,) with costs.

That the said libellants, Moore & Folger, recover from the defendant the sum of two hundred and thirty-two dollars and eleven cents, ($232 11,) with costs.

That the said libellants, Park and White, recover from the defendant the sum of two hundred and thirty-two dollars, ($232 00,) with costs.

That the said libellants, Bond & Hall, recover from the defendant the sum of three hundred and thirty-eight dollars and seventy-two cents ($338 72,) with costs.

That the said libellants Jones & Stevens, recover from the defendant the sum of seven hundred and twenty-two dollars and eighty-four cents, ($722 84,) with costs.

That the said libellants, J. Y. Hallock & Co., recover from the defendant the sum of one thousand four hundred and four dollars and ninety-five cents, ($1,404 95,) with costs.

451 That the said libellants, J. Patrick & Co., recover from the defendant the sum of ten thousand six hundred and ninety-one dollars and thirty-eight cents, ($10,169 38,) with costs.

That the said libellants, J. W. Embury, William C. Annan, and George Hazzard, recover from the defendant the sum of ten thousand seven hundred and nineteen dollars and twenty-seven cents, ($10,719 27,) with costs.

And that after such final decree your petitioner duly appealed therefrom to the Circuit Court of the United States for the districts of California, in and for the northern district; and the said causes, and each of them, were removed thereby into the said Circuit Court of the United States, in and for the northern district of California, in pursuance of an act of Congress entitled "An act to provide Circuit Courts for the districts of California and Oregon, and for other purposes," approved March 3rd, 1863, by an order of said court duly made, and the same were there tried and heard upon the same pleadings, evidence, and proceedings, in said causes, and each of them as in the said District Court as set forth, and contained in the transcript of the record transmitted from said District Court to the

452 said Circuit Court, and therein filed; and such proceedings were had in the said Circuit Court of the United States for the northern district of California, made a final decree of the said causes, whereby it was decreed that the said decree of the District Court be in all things affirmed, with costs.

Which said decree of the said Circuit Court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant appeals to the Supreme Court of the United States from so much of said decree of said Circuit Court, whereby it is "adjudged and decreed that the libellants, Wm. C. Annan, Wm. H. Talmage, and J. W. Embury, recover against the defendant the sum of $26,469, with costs; that the libellant, Jesse Sawyer, recover, etc., $13,614 54, with costs; that the libellants, J. Patrick & Co., recover, etc., $10,691 38, with costs; that the libellants, J. W. Embury, Wm. C. Annan, and Geo. Hazzard, recover, etc., $10,719 29, with costs;" and respectfully prays that said decree of the said Circuit Court, as so much thereof as is appealed from, and the libels, answers, pleadings, depositions, evidence, and proceedings, in the said four cases of the said libellants, Wm. C. Annan, Wm. H. Talmage, J. W. Embury, Jesse Sawyer, J. Patrick & Co., J.
453 W. Embury, Wm. C. Annan, and Geo. Hazzard, and each of them, may be sent to the Supreme Court of the United States without delay, and that the Supreme Court will proceed to hear the said cause anew; and that the said decree of the Circuit Court, as to so much thereof as is appealed from, may be reversed, and a decree made dismissing the libels in said four causes, and each of them, with costs, or such other decree as to the said Supreme Court shall seem just.

E. CASSERLY,
For Appellants.

Endorsed: Filed 17 October, A. D. 1867. Geo. D. Whitney.

454

455 In the Circuit Court of the United States in and for the northern district of California.

Notice of appeal.

THE SHIP "STAR OF HOPE," her tackle, apparel and furniture, &c., Henry Pearsons, claimant of the said ship "Star of Hope," her tackle, &c., and appellant,
vs.
WM. C. ANNAN, WM. H. TALMAGE, and James W. Embury, libellants and appellees.

2. SAME APPELLANT
vs.
JESSE SAWYER, libellant and appellee.

3. SAME APPELLANT
vs.
ADRIAN & STORY, libell'ts and appellees.

4. SAME APPELLANT
vs.
J. D. WING, libell'ts and appellees.

8. SAME APPELLANT
vs.
DAVID H. BURKE, libell't and appellee.

5. SAME APPELLANT
vs.
J. M. POMARES & Co., libell'ts and appellees.

6. SAME APPELLANT
vs.
CROSBY & DIBBLEE, libell'ts and appellees.

7. SAME APPELLANT
vs.
D. R. PROVOST, libell't and appellee.

9. SAME APPELLANT
vs.
BENJ. F. NESBITT, libell't and appellee.

456 10. SAME APPELLANT
vs.
MOORE & FOLGER, libell'ts and appellees.

11. SAME APPELLANT
vs.
PARK & WHITE, libell'ts and appellees.

12. SAME APPELLENT
vs.
BOND & HALE, libell'ts and appellees.

13. SAME APPELLANT
vs.
JONES & STEVENS, libell'ts and appellees.

14. SAME APPELLANT
vs.
J. Y. HALLOCK & Co., libell'ts and appellees.

15. SAME APPELLANT
vs.
JAMES, PATRICK & Co., libell'ts and appellees.

16. SAME APPELLANT
vs.
JAMES W. EMBURY, WM. C. ANNAN, and George Hazzard, libell'ts and appellees.

The above-named claimant, Henry Pearsons, conceiving himself aggrieved by so much of said decree of said Circuit Court, whereby it is "adjudged and decreed that the libellants, Wm. C. Annan, Wm. C. Tallmage, and J. W. Embury, recover against the defendant the sum of $26,469, with costs; that the libellant, Jesse Sawyer, recover, etc., $13,614 54, with costs; that libellant, J. Patrick & Co., recover, etc., $10,691 38, with costs; that the libellants, J. W. Embury, Wm. C. Annan, and George Hazzard, recover, etc.,
457 $10,719 29, with costs," doth hereby appeal therefrom to the Supreme Court of the United States; and he prays that this, his appeal, may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

Oct. 17th, 1867.

E. CASSERLY,
For Appellants and Claimants.

Endorsed: Filed 17th October, 1867. Geo. E. Whitney, clerk.

In the Supreme Court of the United States.

Citation.

THE SHIP "STAR OF HOPE," her tackle, apparel and furniture, &c., Henry Pearsons, claimant of the said ship "Star of Hope," her tackle, &c., and appellant,
vs.
WM. C. ANNAN, WM. H. TALMAGE, and James W. Embury, libellants and appellees.

2. SAME APPELLANT
v.
458 JESSE SAWYER, libellant and appellee.

3. SAME APPELLANT
v.
ADRIAN & STORY, libell'ts and appellees.

4. SAME APPELLANT
v.
J. D. WING, libell't and appellee.

6. SAME APPELLANT
v.
CROSBY & DIBBLEE, libell'ts and appellees.

10. SAME APPELLANT
vs.
MOORE & FOLGER, libell'ts and appellees.

12. SAME APPELLANT
vs.
BOND & HALE, libell'ts and appellees.

14. SAME APPELLANT
vs.
J. Y. HALLOCK & Co., libell'ts and appellees.

5. SAME APPELLANT
v.
J. M. POMARES & Co., libell'ts and appellees.

7. SAME APPELLANT
v.
D. R. PROVOST, libell't and appellee.

11. SAME APPELLANT
v.
PARK & WHITE, libell'ts and appellees.

13. SAME APPELLANT
vs.
JONES & STEVENS, libell'ts and appellees.

15. SAME APPELLANT
v.
JAMES PATRICK & Co., libell'ts and appellees.

16. SAME APPELLANT
v.
JAMES W. EMBURY, W. C. ANNAN, and George Hazzard, libell'ts and appellees.

UNITED STATES OF AMERICA, *ss:*

459 To the above-named appellees, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, on the first Monday of December next, pursuant to an appeal from a decree of the Circuit Court of the United States for the district of California, wherein Henry Pierson is appellant, and you are appellees, to show cause, if any there be, why the said decree should not be corrected, and speedy justice done to the parties in that behalf.

Oct. 17th, 1867.

STEPHEN J. FIELD,
Associate Justice of the United States Supreme Court.

Service of a copy of the within citation and of copies of notice of appeal and of the appeal in the within cause, this day made, is hereby admitted.

San Francisco, Oct. 17th, 1867.

SOL. A. SHARP,
For JAMES W. EMBURY.
W. C. ANNAN.
GEORGE HAZZARD, and
ANNAN, TALMAGE & EMBURY,
Some of the Appellees above-named.

Endorsed: Filed Oct. 19th, 1867. Geo. E. Whitney, clerk, by John O. Wheeler, D. C.

460

461 Circuit Court of the United States, district of California.

THE SHIP "STAR OF HOPE," &c.,
vs.
W. C. ANNAN *et al.*

I, George E. Whitney, clerk of the Circuit Court of the United States, ninth circuit, for the district of California, do hereby certify that the foregoing four hundred and pages, together with the folio volume in red, and the Exhibits "A," "B," "C," and "D" hereto annexed, contain a full, true, and correct copy and transcript of the record, and of all proceedings in the cause above entitled, now remaining of record and on file in my office.

Witness my hand and the seal of said Circuit Court, this 14th day of November, A. D. 1867.

[SEAL.] GEO. E. WHITNEY, *Clerk.*

462 Circuit Court of the United States in and for the northern district of California.

Appeal in Admiralty.

1. SHIP STAR OF HOPE, HENRY PEARSONS, claimant, appellant,
vs.
WILLLIAM C. ANNAN *et als.*, libellants, respondents.

2. SAME APP'LL'T
v.
JESSE SAWYER, resp't.

3. SAME APP'LL'T
v.
ADRAIN & STORY, resp't.

4. SAME APP'LL'T
v.
J. D. WING, resp't.

5. SAME APP'LL'T
v.
J. M. POMMARES *et al.*, resp'ts.

6. SAME APP'LL'T
v.
CROSBY & DIBBLEE, resp'ts.

7. SAME APP'LL'T
v.
BOND & HALE, resp'ts.

8. SAME APP'LL'T
v.
JONES & STEVENS, resp'ts.

9. SAME APP'LL'T
v.
D. R. PROVOST, resp't.

10. SAME APP'LL'T
v.
DAVID H. BURKE, resp't.

11. SAME APP'LL'T
v.
BENJ. F. NESBITT, resp't.

463 12. SAME APP'LL'T
v.
MOORE & FOLGER, resp'ts.

13. SAME APP'LL'T
v.
PARK & WHITE, resp'ts.

14. SAME APP'LL'T
v.
J. Y. HALLOCK *et al.*, resp'ts.

15. SAME APP'LL'T
v.
JAMES PATRICK *et al.*

16. SAME APP'LL'T
v.
JAMES W. EMBURY *et al.*, resp'ts.

464 NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

E. Casserly, having been duly sworn, deposes and says:

The folio volume bound in red, to which this affidavit is annexed, is the volume referred to in the affidavits of William H. Chevers, Cutler McAllister, and C. Temple Emmet, esq'rs, in the above-entitled actions, as having been seen by them respectively in my hands or in my office.

As the proctor of the ship, throughout the litigation herein, I was very familiar with the original "folio volume in red," prepared by Mr. J. P. Haven, which formed one of the exhibits attached to the report of William H. Chevers, esq., commissioner in the District Court, remained on file there, and was sent up on the appeal to the Circuit Court attached to the transcript, and as a part thereof.

I had occasion to examine it, more or less, thoroughly, several times, and became very well acquainted, not only with its general appearance, but with its entire contents under their various heads throughout.

465 The annexed volume was prepared at my request, by Joseph T. Hamm, esq., as and for a complete and exact copy of the original "folio volume in red," and to supply its place in the transcript on appeal in this court. I was informed by Mr. Hamm, and verily believe that he prepared the annexed volume from the same papers from which was prepared the original volume; and that these papers remained in his hands since his employment by Mr. Haven and under his supervision in the original adjustment, before this litigation commenced.

I have no doubt whatever that the annexed volume is a true copy of the original "folio volume in red."

I further state, that soon after Messrs. Sharp and Lloyd, proctors, &c., commenced proceedings to enforce the collection of the decrees in the first and last of the above-entitled causes, I looked for the exhibits (including the "folio volume in red") which were annexed to and a part of the transcript on appeal in this court. After a long and very thorough seach, extending from time to time through some weeks, in the files and clerk's offices of this and the District

466 Court, in which I had the aid of the present officers of the courts and their predecessors, I succeeded in finding in the clerk's office of this court Exhibits A, B, C, and D; but did not succeed in finding the other exhibit, "the folio volume in red," though I extended my search for it to every place where I thought it might be found.

I became and am satisfied that the said folio volume was and is lost from the files of this court.

(Signed) E. CASSERLY.

Subscribed and sworn to before me, this 12th day of May, A. D. 1866.

S. NEALL, *U. S. Comm'r.*

467 The ship "Star of Hope," H. Somerby, master, sailed from New York, on or about the 10th day of February, 1856, for the port of San Francisco, California. During the voyage and when off the coast of Patagonia, the vessel sustained certain injuries which forced the captain to put into Montevideo for repairs, creating thereby certain charges and expenses as general average, which has been adjusted and apportioned according to the rules and regulations of the port of San Francisco.

Total.	Bills.	Cost of coppering.	General average.	Particular average.		Owners.
			All.	⅓ off.	All.	
$269 49	UNITED STATES CONSULATE.					
	For deposit of papers		5 99			
	noting protest and recording ship'g list		1 50			
	orders for seven surveys		3 50			
	three estimates of cost of repairs				3 50	
	orders to hospital for seamen				3 00	
	extending and recording protest					6 00
	3 certified copies of note of protest		1 25		1 25	
	7 do. orders for surveys		3 75		3 75	
	do. reports of do		26 25		26 25	
	3 do. protest		26 25		26 25	
	3 do. orders for estimates		12 00		12 00	
	3 do. reports of do				22 50	
	3 do. surveys of cargo on landing				22 50	
	3 do. signatures to damage		7 50			
	discharging seamen		7 50			
	shipping 13 men					3 00
	certificates of signatures to accounts of sales					13 00
	certificates of signatures to bills		5 00		5 00	3 50
	3 do. currency		2 50		3 50	75
	certificates to articles		2 00		3 00	1 00
	Spanish certificate to crew list					2 25
469			2 50			
	SURVEYORS.					
32 00	Robert B. Hallet, four surveys on ship		16 00		16 00	
32 00	Albert Jewett, four surveys on ship		16 00		16 00	
16 00	Luther Manson, two surveys on ship		8 00		8 00	

16 00	E. Burnham, one survey on vessel when out				16 00	
24 00	Edward Upton, one survey on vessel when out, and one general (?) survey.		8 00		16 00	
40 00	R. S. Thomas, two surveys on vessel when out, one general (?) survey.		8 00		32 00	
40 00	Thomas Fenhagen, same		8 00		32 00	
470 32 00	John Laws, four surveys on vessel					579 22
579 22	Charles Spotarno, for provisions furnished the vessel during her detention in port.					
			171 49		300 50	608 72
1,080 71	Spanish dollars					
	REDUCTION.					
1,296 7	Currency, as per certificate of U. S. Consul, being $ Spanish, equal to		205 6		360 5	730 4
471 342 7½	Abel C. Brown, for cooperage on cargo, rendered necessary by discharge in order to repair the vessel, to wit:					
	106 hds. coal trimmed		39 6			
	69 iron hoops		25 7			
	168 bbls. spirits coopered		42			
	111 iron hoops		27 6			
	For strapping the following packages:		45			
	360 small packages		20 6			
	83 bbls. of beef		4 2			
	17 iron hoops		2 0			
	8 bbls. spirits		4 0			
	16 iron hoops		18 2			
	73 large boxes		4 3			
	35 barrels		1 0			
	4 kegs paint oil		4			
	2 iron hoops		1 2			
	10 kegs paint		6			
	3 hogsheads		3 0			
	4 pipes spirits					
			446 2		360 5	730 4
1,639 6½	Forward					

Statement of general and particular average.—Continued.

Total.	Bills.	Cost of coppering.	General Average.	Particular Average.		Owners.
			All.	⅓ off.	All.	
1,639 6½	Forward		446 2		306 5	730 4
	For coopering cargo re-embarked, for injuries occasioned thereto by ware-housing and consequent handling :					
472	5 hhds. coal		1 7			
	6 iron hoops for same		2 2			
	82 large boxes		20 4			
	244 small do		30 4			
	37 bbls. beef		30 4			
	4 iron hoops		1			
	4 heads		2			
	4 water casks		1			
	5 iron hoops		2 2			
	8 boxes		7			
	8 bbls. pork		2			
	4 iron hoops		1			
	6 bbls. or kegs paint		6			
	4 iron hoops		4			
	48 staves		12			
	4 hogheads		1 4			
	113 feet lumber		7 ½			
1,639 6½	In currency		548 5½		360 5	730 4
1,366 42	In Spanish		457 20		300 50	608 72
2,698 65 [473]	Charles W. Parsons, jun'r, for lighterage of cargo landed and reshipped, viz :					
	7,975 packages landed		498 43			
	4,727 do reshipped		295 43			

	480 do landed			120 00		
	328 do reshipped			95 50		
	44 do landed and reshipped			44 00		
	89 large cases do			348 00		
	2,787 barrels landed			348 37		
	660 do reshipped			82 50		
	436 casks landed			213 00		
	170 do reshipped			85 00		
	11 bbls. landed and reshipped			11 00		
	98 bales rope landed			12 25		
	6 large coils rope landed and reshipped			12 00		
	42 crates crockery landed			21 00		
	36 do do reshipped			18 00		
	688 kegs paint landed			20 63		
	264 bars iron do and reshipped			15 84		
	154 bundles iron do do			38 50		
	12 anvils do do do			3 00		
	28 packages do			7 00		
	182 nests baskets landed			5 40		
474	150 nests baskets reshipped			4 50		
	30 do. do. landed and reshipped			7 50		
	50 do. tubs do.			12 50		
	30 doz. pails do.			7 50		
	4 bales do.			4 00		
	6 nests do.			1 50		
	70 bundles do.			8 75		
	65 doz. washboards do.			8 13		
	3 pieces machinery do.			6 00		
	84 pieces and sets of hubs			3 66		
	70 bundles of spokes			8 75		
	50 cords of wood			125 00		
	112 oak plank			7 00		
	35 tons coal landed			14 00		
	200 tons coal transhipped			96 00		
	9 nights watching goods			18 00		
	2 lighter boats' provisions landed			30 00		
	2 do. reshipped			30 00		
4,065 07	Forward			3,149 84		300 50 608 72

Statement of general and particular average.—Continued.

Total.	Bill.	Cost of coppering.	General average.	Particular average.		Owners.
			All.	⅓ off.	All.	
	Forward		3,149 84		300 50	608 72
4,065 07	Moving anchor to moor ship while discharging		6 00			
	Joseph Coelho:					
1,250 44	For an anchor in place of one slipped		145 00			
	boat hire for survey		4 00			
	do. for captain		7 00			
	For 1,160 gall's water					11 60
475	246 lbs. Manilla rope for falls, for discharging cargo, and used up, and primage on the same.		61 25			
	boathire for seamen					50
	100 lbs. potatoes					4 00
	salt					42
	wafers					22
	63 lbs. potatoes					2 52
	246 lbs. Manilla rope for tackles, as above		61 00			
	primage		12			
	6 lbs. nails for cargo		60			
	labor of 4 men		6 00			
	1 bottle of red ink					25
	61 lbs. potatoes					2 44
	900 gal's water					9 00
	64 lbs. potatoes					2 56
	2 shovels to discharge coals		1 67			
	80 lbs. potatoes, 600 gal's water					8 20
	80 lbs. potatoes					3 20
	2 wheel-barrows for coal		16 00			
	2 shovels for coal		1 67			
	63 lbs. potatoes					2 52
	52 lbs. do. and boathire					2 33

476	62 lbs. rice					6 20
	50 lbs. potatoes					2 00
	9 lbs. butter					4 50
	43 lbs. tea					21 50
	boat-hire					50
	300 gal's water		59 50			3 00
	238 lbs. Manilla rope for falls					3 00
	30 lbs. flour		111 25			
	445 lbs. hemp rope for falls		1 00			
	boathire					1 60
	40 lbs. potatoes			2 50		
	4 ship's scrapers					1 60
	40 lbs. potatoes			8 60		
	86 lbs. Kiar rope					19 50
	26 gall's molasses					7 00
	700 do. water					75
	boathire					75
	3 lbs. coffee					25
	boat-hire					25 00
	200 lbs. sugar					80
	20 lbs. potatoes		62			
	black lead for discharging fall blocks					5 85
	58½ lbs. soap					50
	brass brush					1 50
	4 lbs. black pepper			9 00		
	3 kegs white lead			24 00		
	8 kegs black paint			35 00		
478	For 21 gall's paint oil			6 25		
	5 lbs. turpentine			2 50		
	10 lbs. litherage					4 50
	450 gall's water			1 75		
	4 paint brushes					25
	4 tins blacking					32
	2 bundles. (?)					3 34
	1 kettle and ladle					50
	1 trimenter					
	2 winches hired for hoisting wet cargo		6 00			
	Forward		3,638 52	89 60	300 50	773 19
£	5,315 51					

Statement of general and particular average.—Continued.

Total.	Bills.	Cost of cop-perage.	General average.	Particular average.		Owners.
			All.	⅓ off.	All.	
5,315 51	Forward		3,638 52	89 60	306 50	773 19
	4 shovels to discharge coal		3 34			
	300 lbs. bread					27 50
	2 tin pots and 2 tin plates					50
	2 tablespoons					25
	14 lbs. butter					5 25
	600 gal's water					6 00
	105 lbs. nails for cargo packages		10 50			
	30 lbs. spikes			3 00		
	25 lbs. coffee					4 00
	300 lbs. bread					27 50
	25 lbs. salt					50
	3 jars salt					60
	2,495 gall's water					24 95
	eggs					50
	peonage on potatoes					25
	potatoes					11 00
479	25 lbs. coffee—					4 00
	advertising (?)					38
	83 lbs. Manila rope, for cargo slings		20 75			
	3 lbs. twine, for seizings and whippings		1 50			
	6 skeins marline, do.		75			
	2 lbs. whipping twine		1 00			
	23 lbs. hide rope			8 62		
	3 lbs. bees-wax			11 50		
	30 y'ds bagging, for cargo		3 75			
	141 lbs. Manila cordage, for cargo		35 25			
	3½ lbs. paint			1 46		
	6 marline spikes					3 00

pump leather			9 00		
100 lbs. black paint			12 00		
blacksmithing			8 25		
10 lbs. candles					1 67
200 lbs. coffee					32 00
10 lbs. butter					3 12
1 bag					25
3 lbs ground pepper					1 12
peonage					37
tinsmith					50
17 brooms					1 70
2 doz. common brooms					75
1½ lbs. copper tacks					1 50
6 gall's olive oil					10 00
10 gall's paint oil			16 66		
17 lbs. whiting					85
1 bbl. flour					16 00
200 lbs. bread					18 34
1,620 gals. water					16 20
anchor stock repaired on one replaced		84			
18 sail needles					75
24 tins beef					16 80
12 doz. eggs					2 40
1 bbl. tar					7 00
300 lbs. beans					27 50
1 doz corn brooms					4 50
peonage on bread					12
38 lbs. bread					3 50
3 panes glass					50
280 lbs. corn					12 50
2 bags, for corn					50
sundry supplies					9 00
blacksmithing			13 90		
sugar and coffee					27 00
1,900 gals. water					19 00
Forward		3,716 20	173 99	300 50	1,124 81

5,315 51

Statement of general and particular average.—Continued.

Total.	Bills.	Cost of coppering.	General average.	Particular average.		Owners.
			All.	½ off	All.	
5,315 51	Brought forward		3,716 20	173 99	300 50	1,124 81
17,311 00	John Laws, for the following work performed agreeable to contract, and specified as follows, preliminary to heaving down:					
481	For oakum, pitch, tar-oil, lumber, and hardwood plank			650 00		
	services of shipwright engaged in removing the sheathing from the stern; fastening plank, and replacing stern-sheathing; two new planks in the side; mouldings, &c., &c., embracing 120 days at $3.			360 00		
	services of caulker in caulking the ship from copper line to plank shear, timber heads, stanchions, water-ways, deck-poop, and top-gallant forecastle, inboard and out; cabin, deck, forecastle and galley-deck, and gnick work around the bow, comprising 1,350days, at $3 per day.			4,050 00		
	90 days labor of boys, at $1½ per day			135 00		
	master shipwright and caulker			500 00		
	384 days labor, preparing to heave down			1,152 00		
	carved work for stern			30 00		
	150 days labor, heaving down twice			900 00		
	60 days floating stages			150 00		
	240 days hanging do.			240 00		
	30 days pitch pots and maps			7 50		
	use of ring-bolts, spars for out-riggers to shore the masts and deck; chain-warps, blocks and falls, to secure the out-riggers, and lashing for spars,			280 00		
	bolts to fasten planks, use of pontoons, blocks and falls to heave the vessel down; lashings for blocks and all other things necessary to heave down.			2,000 00		
	blacksmith bill			50 00		

	boat hire for workmen			108 00		
	do. do. while hove down			12 00		
	portrages and boat hire, transporting material			25 00		
	For repairing port side of vessel, viz;					
	oak plank			50 00		
	4 bbls. Swedish tar			60 00		
	2 bbls. tar			30 00		
	400 lbs. oakum			60 00		
	300 sheets copper	1,080 00				
	550 lbs. do. nails	275 00				
	155 lbs. bolts and spikes			77 50		
	paper for copper	85 00				
	expenses on heaving down to repair bottom (?)			500 00		
	For stripping copper with care, in order to replace the same after			624 00		
483	effecting repairs.			780 00		
	52 shipwrights			42 00		
	4 boys, 7 days ea., *a* $1½			70 00		
	7 stages			30 00		
	boat hire					
	For repairs effected upon starboard side:			60 00		
	4 bbls. Swedish pitch			30 00		
	2 bbls. tar			60 00		
	400 lbs. oakum					
	200 sheets copper	720 00				
	550 lbs. copper nails	368 50				
	paper to put under copper			85 00		
	expenses on heaving down			300 00		
	52 shipwrights, 1 day, *a* $6			312 00		
	52 men, 4 do $3			624 00		
	4 boys, 6 do $1½			36 00		
	7 stages			52 50		
	boat-hire		30 00	30 00		
	1 anchor stock for anchor replaced		15 00			
	portage and cartage on landing spars		175 00			
	hulk hire used to receive the coals		2,000 00			
484 2,000 00	J. B. Capurro, for rent of store-house for four months for use of cargo, while vessel was undergoing repairs.					
24,626 51	Forward	2,528 50	5,936 20	14,736 49	300 50	1,124 81

Statement of general and particular average.—Continued.

Total.	Bills.	Cost of coppering.	General average	Particular average.		Owners.
			All.	All.	⅓ off.	
24,626 51	Brought forward	2,528 50	5,936 20	14,736 49	300 50	1,124 81
833 34	James Cibits, for rent of store-ship Felia, 2 months, for storage of coal.		833 34			
81 97	E. Antonini, for rent of warehouse for storage of 134 cords wood		54 06			
	for landing and reshipping same		27 91			
189 41	Robert Robinson, for 50 sheets yellow metal, 353 lbs; 403, *a* 47, 1 keg nails, 50.	189 41				
35 00	G. B. Chisn, for gilding stern and repairing arm of figure			35 00		
485 201 67	C. W. Parsons, jun'r, for 1 bbl. sugar					32 37
	1 bbl. rice					23 80
	4 boxes raisins					16 00
	3 coils ratline, 3 coils marline used for lashings and seizings for discharging tackles (?)		80 00			
	9 lbs. cotton twine			4 50		
	3 boxes zinc paint.			45 00		
96 00	John H. **Thatcher**, for services as clerk in taking acc't of cargo		96 00			
310 00	Fran'co **Bernisson**, for boat-hire in attendance upon vessel while discharging and repairing.		155 00	155 00		
1,052 68	A. Somerby, for cash for boat-hire		2 50			
	vegetables					5 11
	labor on discharging cargo		190 50			
486	for fish					1 20
	pilot		2 00			
	cook's wages					10 52
	labor discharging cargo		30 50			
	Do.		24 00			
	Do.		115 50			
	board bill of master					154 50
	crews' board					13 50
	labor on board, taking on board cargo		163 80			

	seamen's wages					
1,934 29	labor		41 03			298 02
487 1,837 44	Vincenti Perez, to receiving, storing, and reshipping the cargo[a]		1,934 29			
	Southgate & Co., for Escribana's fees to open register, &c		13 34			
	stamp for same		25 00			
	tonnage dues		249 50			
	guard money		100 00			
	hospital and bill of health		9 75			
	health visit and boat hire		5 96			
	pilotage for removing vessel		37 18			
	cash to Capt. Somerby					
	gratification to custom-house officers		175 50			1,213 83
31,198 31	boat-hire at various times		7 30			
1,559 90	Commissions 5 p'r c	2,717 91	10,310 25	14,975 99	300 50	2,893 66
		135 90	515 50	748 80	15 00	144 70
	ALSO,					
2,509 00	For landing and taking charge of the cargo and attending to the re-shipment, estimated value $100,000, *a* 2½ p. c.		2,500 00			
101 69	A. Somerby, for boat-hire					
	blacksmith's bills		10 00			
	pilotage to sea		4 33	11 00		
	supplies		32 00			
	chronometer, &c					35 36
35,359 90	Forward					9 00
		2,853 81	13,372 08	15,735 79	315 50	3,082 72

[a] NOTE.—It is impossible to understand from the bills the particular nature of the services; the same work appears to have been performed over and over again, and every one had a hand in the cargo.

Statement of general and particular average.—Continued.

Total.	Bills.	Cost of coppering.	General average.	Particular Average.		Owners.
			All.	⅓ off.	All.	
35,359 90	Brought forward	2,853 81	13,372 08	15,735 79	315 50	3,082 72
64,567 12	COST OF FUNDS.					
	Per statement it appears that the loss by sale of property at Montevideo amounted to $64,567 12-100, which apportioned upon a total expenditure in Montevideo, (not including balance of sales handed over to the master, of $4,193 66,) is a per centage of 1 82.5992.	5,211 07	24,417 39	28,733 50	576 11	5,629 05
489 2,666 93	WAGES AND PROVISIONS.					
	Thé vessel, as by her protest, bore away on the 14th of April, and sailed on the 10th of September, making the period of her detention 4 months, 26 days—					
	For Master ..... *a* $125					
	Mate 55					
	2d Mate 30					
	14 men, *a* $15 ..... is 210					
	4 ordinary, 12 48					
	5 boys, 8 40					
	Cook 20					
	Steward 20					
	Per month 548					
			2,666 93			

2,590 00	PROVISIONS.						
	Master ..... *a* $2 00 per diem.						
	2 mates, $1 50 each ..... 3 00 "						
	25 men, 50 " ..... 12 50 "						
	$17 50 "						
490			2,590 00				
	SACRIFICES.						
	For material belonging to the vessel used in the manner designated, viz:						
	Difference in the weight of anchor slipped 3,500						
	And anchor obtained in Montevideo, estimated 2,500						
80 00	1,000 lbs., *a* 8		80 00				
144 90	15 fathoms chain, 1¼ in., slipped 2,415 lbs, *a* 6 ..... 144 90						
	Deduct ⅓d 48 30						
			96 60				48 30
208 51	1 new hauser cut and chafed, and thereby rendered useless, in hauling ship to and from hulks in discharging, 90 fath's 9 in., 1,438 lbs., *a* 14½.		208 51				
	Deduct sales old hauser.						
16 00	1 bolt canvass for sides of vessel while discharging the coals		16 00				
40 60	1 coil manila hauling line, destroyed in hauling vessel daily to and from hulks, 3½ in., 280 lbs., *a* 14½.		40 60				
491 1,633 90	Claims for injury sustained by a portion of the cargo, in consequence of frequent handling in its discharge, as per certificate of J. C. Hoyt, agent of underwriters:						
	Joseph Genella, loss by breakage of crockery		134 00				
	Bragg, Rollinson & Co., loss by breakage on pipes		50 47				
	Henry Dopmann, loss by breakage of pipes		165 82				
	Annan, Talmage & Co., deterioration on woodware		133 15				
	Annan, Talmage & Co., breakage of glassware, invoice, $96		676 79				
	Do. do. consignment ac., Bernard, Eger & Co., Nos. 28 and 72		473 67				
107,307 86	Forward	8,064 88	45,122 01	44,469 29	891 61	8,760 07	

Statement of general and particular average.—Continued.

Total.	Bills.	Cost of coppering.	General average.	Particular Average.		Owners.
			All.	⅓ off.	All.	
107,307 86	Carried forward	8,064 88	45,122 01	44,469 29	891 61	8,760 07
492	FOR SHORT DELIVERIES.					
	The coal by its discharge into the hulks and thence into the vessel, was ground up, and much of it in the nature of dust lost, and not delivered, being a compound of coal dust and dirt.					
18 66	C. H. Coffin, 15 830-2240 tons coal, *a* 16 75 ..... 257 47					
	Less freight 225 94					
	Commission, ... 12 87					
	238 81					
			18 66			
452 78	For pilferage and abstraction from packages, chiefly wearing apparel and preserves, either in warehouse at Montevideo or in course of reshipment.					
493	Annan, Talmage & Co., (4) 5 boxes soap, to fill up 100 lbs., *a* 7,7 50					
	Deduct freight 0 75					
	Commission 0 87					
	1 12					
			6 38			
	R. E. Brewster & Co., (7) 8 boxes soap, to fill up 160 lbs., *a* 7 .. 11 20					
	Deduct freight 1 05					
	Commission 0 55					
	1 60					
			9 60			
	Park & White, (9) 2 boxes bitters, to fill outs 16 00					
	Deduct freight 1 30					
	Commission 80					
	2 10					
			13 90			

	J. Y. Hallock & Co., 3 boxes soap, 60 lbs., *a* 8c		4 80				
	Deduct freight	30					
	Commission	0 24					
			0 54				
494	Conroy & O. Connor, (36 & 37,) 2 doz. silver shaft tips	8 33			4 26		
	1 book	1 50					
	6 volumes books	13 72					
			23 55				
	Deduct freight	1 00					
	Commission	1 17					
			2 17				
	U. S. Naval Storekeeper, (41) 61 pairs shoes, *a* 1, 87½	114 38			21 38		
	23 pairs shoes, *a* 1 75	40 35					
			154 63				
	Deduct freight	2 00					
	Commission	7 72					
			9 72				
	C. & A. J. Langley, (43) 1 10-12 doz. cordial		33 43		144 91		
	Deduct freight	1 00					
	Commission	1 67					
			2 67				
495	Edwin Booth, 65 hats		34 08		30 76		
	Deduct freight	2 35					
	Commission	1 70					
			4 05				
	Ulmer, Feigenbaum & Co., (82,) 16 pairs pants and 3 vests		35 38		30 03		
	Deduct freight	$1 00					
	Commission	1 77					
			2 77				
					32 61		
107,779 30	Forward			8,064 88	45,434 50	44,469 29	891 61	8,760 07

Statement of general and particular average.—Continued.

Total.	Bill.			Cost of coppering.	General average.	Particular average.		Owners.
					All.	⅓ off.	All.	
107,779 30	Brought forward			8,064 28	45,434 50	44,469 29	891,61	8,760 07
	J. R. Newton & Co , (83,) tobacco abstracted		26 75					
	Deduct freight	1 00						
	Commission	1 32						
			2 33					
					24 42			
	Annan, Talmage & Co., (95,) 5 boxes soap to fill up, 100 lb. at 7½ c		7 50					
	Deduct freight	1 00						
	Commission	37						
			1 37					
					6 13			
496	L. R. Provost, (98,) 2 5-12 doz. syrup, *a* $4 00	$ 9 62						
	1 2-12 do. apples, 7 00	8 17						
	2 4-12 do. pie fruit, 8 00	18 66						
	4-12 do. pepper, 1½	42						
	2 do. sauce, 1	2 00						
	2 3-12 do. lemonade 4 00	9 00						
	11 1-2 do. brandy peaches, 4½	51 75						
	2-12 do. apples 3 00	50						
	2 do. tomatoes, 1½	2 50						
	1 4-12 do. gherkins, 3¾	5 00						
	1 1-12 do. do. 2 37	2 57						
			110 24					
	Deduct freight	7 00						
	Commission	5 51						
			12 50					
					97 73			

	H. F. Cutter & Co., 6 cases brandy peaches	26 00						
	2 cases pie fruits	8 50						
			34 50					
	Deduct freight	2 10						
	Commission	1 73						
			3 83		30 67			
497 247 79	FREIGHT.							
	Upon the articles abstracted from the various packages as described in the foregoing, viz:							
	Annan, Talmage & Co., 4		75					
	R. E. Brewster & Co., 7		1 05					
	Park & White, 9		1 30					
	J.Y. Hallock & Co., 26		30					
	Conroy & O'Connor, 36 and 37		1 00					
	U. S. naval storekeeper, 47		2 00					
	C. & A. J. Langley, 43		1 00					
	E. Booth 53		2 35					
	Ulmer, Feigenbaum & Co., 82		1 00					
	J. R. Newton & Co., 83		1 00					
	Annan, Talmage & Co., 95		1 00					
	D. R. Provost, 98		7 00					
	H. F. Cutler & Co., 99		2 10					
	C. H. Coffin (in coal, short)		225 94					
					247 79			
	DISBURSEMENTS							
	Incurred in San Francisco, partly general average and partly chargeable to owners, viz:							
498 145 80	T. Dyer, (warehouse cooper,) for cooperage of cargo when stored				145 80			
60 00	C. H. Clark, for services as clerk assisting in account of cargo discharged at warehouse.				60 00			210 00
210 00	H.W. Starr, for 20 days' services, at $10 per diem, as clerk while discharging cargo, charged to owners, as is usual in all cases, as had not the cargo been stored his services were equally necessary							
108,442 89	Forward			8,064 88	46,047 04	44,469 29	891,61	8,970 07

Statement of general and particular average.—Continued.

Total.	Bills.	Cost of coppering.	General average.	Particular average.		Owners.
			All.	⅓ off.	All.	
108,442 89	Brought forward	8,064 88	46,047 04	44,469 29	891 61	8,970 07
73 00	ADVERTISING.					
	Notice of Warehousing and general average:					
	"Bulletin,"		20 00			
	"Alta,"		10 00			
	"Chronicle,"		23 00			
	"Alta,"		5 00			
	Notice of completion of average and delivery of certificates to be published in 3 papers.		15 00			
499 15 00	Stationery, books, &c., for warehouse and appraisement		15 00			
680 00	Joseph T. Hamm, for 68 days' services as clerk in the warehouse, opening and examining goods, and assisting the appraisers in obtaining the value of property sold and delivered, *a* $10.		680 00			
1,000 00	Ira P. Rankin and C. Hosmer, for appraising the value of the cargo, viz:					
	Ascertaining the condition of goods arrived; ascertaining the value in market of same; ascertaining the value in same of goods sold, and examining the claims for breakage and robbery, extending thro' a period of two months.		1,000 00			
500 25 00	Flint's warehouse, for storage of 25 tons merchandise, 1 mo.		25 00			
1,620 00	Flint, Peabody & Co.'s warehouse, for storage of 810 tons goods for examination and appraisement, for 2 mos., *a* $1 per ton, p. m.		1,620 00			
22 00	U. S. drayman, for cartage of goods, 22 crates, *a* $1.		22 00			
810 00	R. T. Reynolds, for drayage and wharfage of 810 tons goods from ship to Flint, Peabody & Co.'s warehouse.		810 00			
552 00	James L. Tracy, for labor in receiving and assisting, and overhauling the cargo in the warehouse.		552 00			

501	50 00	Janes, Doyle, Barber & Boyd, for professional services in matter of the "Star of Hope," in respect to suit instituted against cargo in general average.		50 00			
	468 75	The Liverpool and London Ins. Co, for premium of insurance upon goods stored in Flint, Peabody & Co.'s warehouse, for 60 days, $75,000, at ⅝ pr. ct. prem.		468 75			
	25 00	George T. Knox, for notarial services, preparing affidavits, viz:					
		Annan, Talmage & Co, claim for breakage		5 00			
		Jos. Genilla do		5 00			
		Bernard, Eger & Co do		5 00			
		Ira P. Rankin, appraisement		5 00			
		Charles Hosmer do		5 00			
502	35 00	Average bond, for drawing and obtaining signatures to the average bond.		35 00			
	2,013 14	Adjuster for collecting, examining, and stating bills in this statement of general average, professional and in appraisement, attending at warehouse, settling claims and services, for a period of 2 months.		1,763 14			
		For stating particular loss on vessel					100 00
		For duplicate copies of this statement		150 00			
	115,831 78		8,064 88	53,335 93	44,469 29	891 61	9,070 07
	2,666 79	Annan, Talmage & Co, for collecting and paying general average, agreeably to the rules of the chamber of commerce, 5 p. c.		2,666 79			
	118,498 57	Total general average		56,002 72			

504 *Appraised value of the cargo sold at Montevideo, and delivered in San Francisco.*

Marks & Nos. of B. L.	Consignees.	Market value.	Freight.	Commissions.	Total charge.	Nett value.
1	Geo. Howes.					
H. G. & Co.	Géo. Howes & Co.					
	8 bales hops, 1,944, a 12½	243 00	56 87	12 15	69 02	173 98
2	Chas. H. Coffin.					
	Flint, Peabody & Co.					
	244 1410-2240 tons coal, 16 75	4,097 50	3,822 20	204 87	4,027 07	70 43
3	N. Dougherty.					
R. R. Craig	Annan, Talmage & Co.					
	2 boxes bedding	100 00	10 78	5 00	15 78	84 22
4	Annan, Talmage & Co.					
	Annan, Talmage & Co.					
A—C.	500 boxes smoking tobacco, 4	2,000 00	290 94	100 00	390 94	1,609 06
5	Annan, Talmage & Co.					
	Annan, Talmage & Co.					
S. & S.	100 10-gal. kegs cherry brandy 1,000					
	Less usual outs 50					
	950 *a*, 1 05	997 50	101 06	49 87	150 93	846 57
505 6	Annan, Talmage & Co.					
	Annan, Talmage & Co.					
	345 8-20 tons Pittston coal, 16 75	5,785 45	6,165 39	289 28	6,454 67	
7	P. H. Fay & Co.					
	R. E. Brewster & Co.					
[F. & B.]	600 boxes pale No. 1 soap, 12,000 lbs., 7	840 00	78 75	42 00	120 75	719 25
8	J. Brewster & Sons.					
	J. H. Updegraff.					

	Brought forward						
J. H. Updegraff. 9	5 boxes, cont'g 2 carriages and 6 harnesses Hostetter & Smith. Park & White.	1,300 00	222 06	65 00	287 06	1,012 94	
P. & W. 10	50 cases bitters, a 8 G. W. Westbrook. Rice and Coffin.	400 00	32 16	20 00	52 16	347 84	
R. & C. 506 11	11 boxes cont'g 10 gro. liament, *a* 17 50 A. Jennings. Jennings & Brewster.	175 00	6 27	8 75	15 02	159 98	
J. & B. 45, 46. 12	2 cases rundles and jumpers, 50½ doz., a 4 50 C. Rockwell. J. W. Clark.	227 25	12 16	11 36	23 52	203 73	
J. W. C. 13	49 kegs safety fuse C. Rockwell. C. C. Webb.	244 55	22 31	12 23	34 54	210 01	
C. [W.] C. 14	12 cases paper Annan, Talmage & Co. Annan, Talmage & Co.	450 00	20 31	22 50	42 81	407 19	
A. C. Hamilton. 15	52 h'f boxes gold leaf tobacco, 2,691 lbs., a 65 cts Albro & Hoyt. Frank Baker.	1,749 15	31 06	87 45	118 51	1,630 64	
[F. B.] 507 17	126 cases oil cloth Annan, Talmage & Co. Annan, Talmage & Co.	4,213 43	319 70	210 67	530 37	3,683 06	
A—C. 18	50 cases apricot tobacco, 8,000 lbs., 40 cts C. B. Norton. Merc. Library Co.	3,200 00	90 35	160 00	250 35	2,949 65	
19	1 case books U. Wolfe. D. H. Burke.	70 00	3 15	3 50	6 65	63 35	
31 [B.] 20	275 boxes schnapps, a 10 50 Annan, Talmage & Co. Annan, Talmage & Co.	2,887 50	179 16	144 38	323 54	2,563 96	
[E.] [T.]	100 bbls. } 100 bbls. } whiskey, 7,997½; outs, 399½—7,597½, 1 20	9,117 00	735 25	455 85	1,119 10	7,925 90	
	Forward	38,097 33	12,199 93	1,904 86	14,104 79	24,661 79	

Marks & No. of B. L.	Consignment.		Market value.	Freight.	Commissions.	Total charge.	Nett value.
21	Brought forward		38,097 33	12,199 93	1,904 86	14,104 79	24,661 79
	J. H. Atkins & Co.		325 00	104 13	16 25	120 38	204 62
[A.]	Adrain & Story.						
508 22	50 bbls. selected thin tar, 6 50						
	W. A. Roberts.		429 94	28 44	21 49	49 93	380 01
[E. F. & Co.]	E. Fitzgerald & Co.						
23	25 boxes hardware						
	Allen, Lowe & Roberts		300 00	56 11	15 00	71 11	228 89
[N]	A. F. Nelson.						
24	3 boxes, &c., 1 buggy and harness						
	Wilson, Fairbanks & Co.						
[T]	Jones & Stevens.						
	30 bbls. alcohol, 1,243½; outs, 62½—1,181, *a* 95		1,121 95	112 46	56 09	168 55	953 40
25 & 44.	John D. Gibson.						
	U. S. naval storekeeper.						
	19 bales clothing	1,900 00					
Comd'g of—	22 do. flannel	1,298 44					
	12 do. satinetts	899 44					
	17 do. mattrasses	510 00					
	25 boxes mustard	90 00					
	25 do. pepper	75 00					
	1 do. tin pots	21 12					
	1 do. tin pans	16 00					
509	2 do. thread	262 50					
	500 bbls. beef	9,000 00					
	400 do. pork	15,200 00					
	47 do. rice 26½ do. do	1,277 72					

	39 do. sugar, 26½ bbls. sugar	1,434 84					
	56 chests tea	1,516 00					
	140 boxes coffee	1,540 00					
	67½ bbls. butter	1,001 22					
	59 boxes cheese	759 79					
	45½ bbls. apples	607 32					
	145 do. beans 27½ do. do	1,881 75					
	24 do. vinegar	326 40					
	100 do. whisky, less outage	2,849 25					
	89 kegs pickles	534 00					
	20 bales trowsers	1,375 00					
	16 do. shirts	1,336 00					
	16 do. do	1,000 00					
	10 do. jumpers	687 50					
	25 do. blankets	1,125 00					
	43 do. matrasses	1,290 00					
	8 do. socks	336 00					
	10 boxes shoes	937 50					
	10 do. do	875 00					
	10 bales flannel	578 63					
	11 do. sheetings	777 75					
510	2 cases small stores	730 74					
	12 do. tin ware	442 00					
	45 boxes tobacco	1,256 00					
	66 do. soap	401 28					
	35 bales palm leaf	105 00					
			56,261 19	4,961 38	2,813 06	7,774 44	48,486 75
26	Wm. Colgate, & Co. J. Y. Hallock & Co.						
J. Y. H. & Co.	500 boxes pale soap, 10,000 lbs., *a* 8	800 00					
	100 do. chem. olive do., 3,600, 10½	378 00					
	200 do. pearl starch, 2,400, 12	288 00					
			1,466 00	92 40	73 30	165 70	1,300 30
27	M. Weissberger. Bond & Hale.						
M. W.	14 cases cheese, 3,407, *a* 15		511 05	38 72	25 55	64 27	1,416 78
	Forward		98,512 46	17,593 57	4,925 60	22,519 17	77,632 51

Appraised value of the cargo sold at Montevideo, &c.—Continued.

Marks & No. of B. L.		Consignees.	Market value.	Freight.	Commissions.	Total charge.	Nett value.
		Brought forward	98,512 46	17,593 57	4,925 60	22,519 17	77,632 51
	28	S. S. Rapplee & Co. E. J. Van Vliet.					
		4 boxes 2 pkgs 4 pieces 1 pale — One reaper, one wagon, one set harness.	745 00	172 99	37 25	210 24	534 76
511	29	Dow & Fowler. J. W. & B. H. Hoag.					
		73 boxes, cont'g 25 threshing machines and machinery	10,000 00	2,016 76	500 00	2,516 76	7,483 24
	30	John Murphy. J. R. Brown.					
J. M.		1 chest, and bundle bed clothes, &c	100 00	8 34	5 00	13 34	86 66
	32	Annan, Talmage, & Co. Annan, Talmage & Co.					
C—D		5 cases cigars, 50 M, $25	1,250 00	24 81	62 50	87 31	1,162 69
	33	Wm. Hall & Sons. G. H. Wines & Co.					
[D. D.]		4 cases musical instruments and music	491 09	17 06	24 55	41 61	449 48
	34	Wm. Hall & Sons. G. H. Wines & Co.					
[A.]		2 cases music and instruments	500 88	8 91	25 05	33 96	466 92
512	35	John Van Ness. Wells, Fargo & Co.					
		1 cask saddler's hardware; 2 boxes do; 3 bundles do.	600 00	19 88	30 00	49 88	550 12
	36	Conroy & O'Connor.					

	Conroy & O'Connor.						
&	34 cases steel	3,438 93					
37	264 bars iron, 90 bdl's do	697 07					
	12 swedge blocks	131 00					
	4 boxes hardware	512 30					
	4 casks do	646 69					
	Manning & Squier.		5,425 99	226 76	271 29	498 05	4,927 94
38	Moore & Folger.						
M. & F.	40 cases and 10 kegs zinc paint, 8,000, 12c		960 00	42 00	48 00	90 00	870 00
	R. Colgate & Co.						
39	J. Y. Hallock & Co.						
J. Y. H. & Co.	625 kegs white lead, 20,000, 10¼		2,050 00	94 50	102 50	197 00	1,853 60
	J. Atkins & Co.						
513 40	Adrain & Story.						
[A]	147 coils Manilla yarn 4,055, 14c	587 98					
	13 kegs marlin, &c., 1,547, 20c	309 40					
	10 do ratlin, 1,343, 18c	241 74					
	Dan E. Delavan.		1,139 12	54 68	56 96	111 64	1,027 48
41	U. S. naval storekeeper.						
	25 bbls. pitch, a $5	125 00					
Com. off.	20 " tar, a $7 50	150 00					
	11 kegs white lead, 2,583, a 8½ ct.	210 56					
	1 box twine and log lines	130 84					
	1½ bbls. chalk	9 00					
	50 bales oakum, 2,500, a 10	262 50					
	4 bbls. tallow, 901, a 14	126 14					
	25 boxes spirits turpentime jettenned	126 14					
	3 bbls. twine, 250, a 35	87 50					
	13 " L. S. oil, 481, a 130	625 30					
	20 boxes copper, 9,563, a 42½	4,064 27					
	3 half-bbls. nails, 1,000, a 35	350 00					
	12 boxes 110 bolts. canvass, various	853 00					
	12 " 159 " " "	2,091 90					
	10 bbls. rosin, $3	30 00					
	14 coils cordage, 1,682, a 20c	336 40					
	18 " " 21,585, a 18	3,384 58					
			13,345 99	1,074 69	667 30	1,741 99	11,604 00
			135,120 53	21,354 95	6,756 00	28,110 95	107,678 80

Appraised value of the cargo sold at Montevideo, &c.—Continued.

Marks & No. of B. L.	Consignees.	Market value.	Freight.	Commssions.	Total charge.	Nett value.
	Brought forward	135,120 53	21,354 95	6,756 00	28,110 95	107,678 80
514 42 H. C. H.	Haviland, Harold & Risley. H. C. Hudson. 15 boxes mustard bottles, 30 gro., a 7½	225 00	42 66	11 25	53 91	171 09
43 C. [L.] A.	E. H. Ring. C. & A. J. Langley. 15 boxes cordials	729 35	9 35	36 47	45 82	683 53
45 F. [B.]	C. Constant. Frank Baker. 5 cases paper	495 25	32 84	24 76	57 60	437 65
46 J. [G.] G.	J. Wolfe. Jos. Genella. 27 crates crockery	2,079 20	494 45	103 96	598 41	1,480 79
47 J. Bithell.	Leavitt, Trow & Co. Jas. Bithell. 7cases books	1,473 81	18 76	73 69	92 45	1,381 36
515 49 J. W. & Son.	John Wilson. John Wilson & Sons. 3 boxes saddlery	414 18	25 20	20 71	45 91	368 27
50 J. B. B.	J. H. Eckley J. Y. Hallock & Co. 1 buggy in-four packages	225 00	46 57	11 25	57 82	167 18
51	Aug. Embury. Annan, Talmage & Co. 25 bbls. alcohol, 1,018 gal's; 51 out—967, a 105 1,015 35 150 octaves brandy, 3,545½; out, 177½—3,368, a 65 2,189 20	3,204 55	438 25	160 22	598 47	2,606 08

52	M. A. Howell & Co.					
[F. B.]	Frank Baker.					
	27 cases paper	1,331 16	181 24	66 56	247 80	1,083 26
53	Geo. Booth & Sons.					
F. B.	Edw. Booth.					
	5 cases hats	200 00	14 08	10 00	24 08	175 92
516 54	W. H. Westervelt					
	J. D. Wing.					
W. [H.] W.	25 bbls. whiskey, 1,044 gals. 51 out } 993 a 50	496 50	87 75	24 82	103 57	392 93
55	O. W. Pollitz & Co.					
	Crosby & Dibblee.					
O. [P.] W. & Co.	50 bbls. whiskey, 2,104 gals. 105 out } 1,999, a 50	999 50	57 50	49 98	207 48	792 02
56	Irving & Clark.					
59	G. O. Whitney & Co.					
[A.]	58 cases furniture	2000 00	389 97	100 00	89 97	1,510 03
57	J. H. Bergman & Co.					
	E. & J. Rosenfeld.					
E. & J. R.	25 boxes pipes, 4	100 00	12 86	5 00	17 86	28 14
58	J. Giraud & Co.					
	J. W. Pomares & Co.					
J. P. & Co.	23 pkg's liquors	335 00	25 18	16 75	41 93	293 07
517 60	Chas. H. Hallock.					
	J. Y. Hallock & Co.					
J. Y. H. & Co.	7 cases shovels and rakes	606 56	93 00	30 33	123 33	483 23
61	D. Colgan.					
	Kerrin & Gallagher.					
	65 b'd'l's gas pipes	850 00	66 24	42 50	108 74	741 26
62	Annan, Talmage & Co.					
	Bernard, Eger & Co.					
Various.	15 crates crockery	1,943 25	208 64	97 16	377 80	1,565 45
63	Annan, Talmage & Co.					
	Bernard, Eger & Co.					
B. E. & Co.	15 cases tumblers, 375 doz., 1 87½	703 13	53 74	35 15	88 89	614 24
	Forward	153,531 87	23,816 23	7,676 56	31,492 79	122,708 30

Appraised value of the cargo sold at Montevideo, &c.—Continued.

Marks & Nos. of B. L.	Consignees.		Market value.	Freight.	Commissions.	Total charge.	Nett value.
	Carried forward		153,531 87	23,316 23	7,676 56	31,492 79	122,708 50
64	E. J. Innis.						
	Bragg, Robinson & Co.						
T. D.	500 boxes pipes, 75		375 00	63 00	18 75	81 75	293 25
518 66	R. A. & W. Ball.						
	R. S. Eells & Co.						
R. S. E. & Co.	1,001 feet oak lumber, 85	85 08					
	1,282 feet ash lumber, 85	108 97					
	564 feet hickory lumber, 100	56 40					
	One rockaway	350 00					
	Four mattresses, 106 lbs., 30	31 80					
	Six pillows	1 56					
	10½ lbs., feathers	5 56					
	5 setts harness	1 26					
			765 37	182 00	38 27	220 27	545 10
67	Carr, Burnett & Oldner.						
	Annan, Talmage & Co						
[S. B. & Co.] 68	25 octaves brandy, 508¼ x 26½, 482 a 225		1,084 50	52 07	54 22	106 29	978 21
	James Patrick.						
	James Patrick & Co.						
[H]	125 hf-bbls. pork, 22		2,750 00	157 50	137 50	295 00	2,455 00
[P.] 69	40 hhd's bacon, 32,099, a 23		7,382 77	386 64	369 13	755 77	6,627 00
" 70	999 boxes candles, 2,480 30		7,254 00	158 81	362 70	521 51	6,732 49
" 71	4 cases cigars, 40, 25		1,000 00	19 53	50 00	69 53	930 47
" 72	2 cases fine cut, 30 gro. 6		180 00	8 30	9 00	17 30	162 70
519 73	E. Frank.						
	E. Frank.						
E. Frank.	1 case bedding and furniture		200 00	22 68	10 00	32 68	167 23

	74	R. Sinclair & Co. W. McK. Carson. 1 reaper and machinery	670 00	164 52	33 50	198 02	471 98
	75	Schieffelin, Bros. & Co. S. Moigneau.					
S. [M.] F.		1 tierce, 16 bbls., 1 case drugs	755 05	41 86	37 75	79 61	675 44
	76	E. W. Page. Adrain & Story.					
A. & S.		2 cases oars, 100, a 1 12½	112 50	14 11	5 62	19 73	92 77
	77	Annan, Talmage & Co. Bernard, Eger & Co.					
		1 case lamps, 9 10-12 doz., 28	75 33	11 39	13 76	25 15	250 18
520	78	Annan, Talmage & Co. Bernard, Eger & Co.					
[B. E.]		9 pkgs glassware	646 58	51 00	32 33	83 33	563 25
	79	J. F. Jenny.					
		84 pairs and 6 sets hubs 70 bbls. spokes 5 kegs nails 1 grindstone 1 roll lead pipe 4 bbls. apples 1 do. peaches 1 bx. hardware 1 do. peaches — All appraised upon the invoice at	511 67	177 25	225 58	202 83	308 84
	80	Annan, Talmage & Co. Bernard, Eger & Co.					
B. E. & Co.		1 box plated ware	712 00	3 50	35 60	39 10	672 90
	82	Ulmer, Feigenbaum & Co. Ulmer, Feigenbaum, & Co.					
U. E. & Co.		20 cases clothing	6,427 00	119 39	321 35	440 74	5,986 31
	83	E. Goodwin & Co. J. R. Newton & Co.					
N.		10 cases 250 boxes 4 cases — Tobacco sold at auction, damaged, for	924 70	138 06	46 24	184 30	740 40
		Forward	185,558 39	25,587 84	9,277 86	34,865 70	151,361 91

Appraised value of the cargo sold at Montevideo, &c.—Continued.

Marks & Nos. of B. L.	Consignees.		Market value.	Freight.	Commissions.	Total charge.	Nett value.
	Carried forward		153,531 87	23,316 23	7,676 56	31,492 79	122,708 50
64	E. J. Innis.						
	Bragg, Robinson & Co.						
T. D.	500 boxes pipes, 75		375 00	63 00	18 75	81 75	293 25
518 66	R. A. & W. Ball.						
	R. S. Eells & Co.						
R. S. E. & Co.	1,001 feet oak lumber, 85	85 08					
	1,282 feet ash lumber, 85	108 97					
	564 feet hickory lumber, 100	56 40					
	One rockaway	350 00					
	Four mattresses, 106 lbs., 30	31 80					
	Six pillows	1 56					
	10½ lbs., feathers	5 56					
	5 setts harness	1 26					
			765 37	182 00	38 27	220 27	545 10
67	Carr, Burnett & Oldner.						
	Annan, Talmage & Co						
[S. B. & Co.]	25 octaves brandy, 508½ x 26½, 482 a 225		1,084 50	52 07	54 22	106 29	978 21
68	James Patrick.						
	James Patrick & Co.						
[H]	125 hf-bbls. pork, 22		2,750 00	157 50	137 50	295 00	2,455 00
[P.] 69	40 hhd's bacon, 32,099, a 23		7,382 77	386 64	369 13	755 77	6,627 00
" 70	999 boxes candles, 2,480 30		7,254 00	158 81	362 70	521 51	6,732 49
" 71	4 cases cigars, 40, 25		1,000 00	19 53	50 00	69 53	930 47
" 72	2 cases fine cut, 30 gro. 6		180 00	8 30	9 00	17 30	162 70
519 73	E. Frank.						
	E. Frank.						
E. Frank.	1 case bedding and furniture		200 00	22 68	10 00	32 68	167 23

	74	R. Sinclair & Co.					
		W. McK. Carson.					
		1 reaper and machinery	670 00	164 52	33 50	198 02	471 98
	75	Schieffelin, Bros. & Co.					
		S. Moigneau.					
S. [M.] F.		1 tierce, 16 bbls., 1 case drugs	755 05	41 86	37 75	79 61	675 44
	76	E. W. Page.					
		Adrain & Story.					
A. & S.		2 cases oars, 100, a 1 12½	112 50	14 11	5 62	19 73	92 77
	77	Annan, Talmage & Co.					
		Bernard, Eger & Co.					
		1 case lamps, 9 10-12 doz., 28	75 33	11 39	13 76	25 15	250 18
520	78	Annan, Talmage & Co.					
		Bernard, Eger & Co.					
[B. E.]		9 pkgs glassware	646 58	51 00	32 33	83 33	563 25
	79	J. F. Jenny.					
		84 pairs and 6 sets hubs 70 bbls. spokes 5 kegs nails 1 grindstone 1 roll lead pipe 4 bbls. apples 1 do. peaches 1 bx. hardware 1 do. peaches — All appraised upon the invoice at	511 67	177 25	225 58	202 83	308 84
	80	Annan, Talmage & Co.					
		Bernard, Eger & Co.					
B. E. & Co.		1 box plated ware	712 00	3 50	35 60	39 10	672 90
	82	Ulmer, Feigenbaum & Co.					
		Ulmer, Feigenbaum, & Co.					
U. E. & Co.		20 cases clothing	6,427 00	119 39	321 35	440 74	5,986 31
	83	E. Goodwin & Co.					
		J. R. Newton & Co.					
N.		10 cases 250 boxes 4 cases — Tobacco sold at auction, damaged, for	924 70	138 06	46 24	184 30	740 40
		Forward	185,558 39	25,587 84	9,277 86	34,865 70	151,861 91

Appraised value of the cargo sold at Montevideo, &c.—Continued.

Marks & Nos. of B. L.	Consignees.	Market value.	Freight.	Commissions.	Total charge.	Nett value.
	Brought forward	185,558 39	25,587 84	9,277 86	34,865 70	151,361 91
84	Annan, Talmage & Co. Annan, Talmage & Co.					
[S. & R.]	12 pipes cologne spirits ..... 2,282 gals. Outs ..... 114 2,168, *a* 84 c.	1,821 12	149 57	91 06	240 63	1,580 49
85	Annan, Talmage Co. Annan, Talmage & Co.					
S. & Co.	300 boxes raisins, *a* $8 ..... 2,400 138 hf. box do. $6 828	3,228 00	177 59	161 40	338 99	2,889 01
	Annan, Talmage & Co. Annan, Talmage & Co.					
A—C. 86	446 boxes soap, 8,920, *a* 5½ c. 490 60	.....	93 66	.....	.....	.....
A—B. 87	278 do. 5,473, 6½ 355 75	.....	58 38	.....	.....	.....
A—D. 95	276 do. 5,474, 7½ 410 55	1,256 90	47 46	62 84	262 34	994 56
88	Annan, Talmage & Co. Annan, Talmage & Co.					
[W.J.] S.	100 bbls. alcohol ..... 4,201 Outs ..... 210, 3,991, *a* 1 05	4,190 55	439 95	290 52	649 47	3,541 08
89	Annan, Talmage & Co. Annan, Talmage & Co.					
C—D	5 cases cigars, 50 M., *a* $25	1,250 00	28 67	62 50	91 17	1,158 83
90	Annan, Talmage & Co. Annan, Talmage & Co.					
A—C	600 cases cider, $3 75	22 50	546 10	112 50	658 60	1,591 40

	91	Annan, Talmage & Co. Annan, Talmage & Co.						
	[S.] R.	250 octaves cognac ..... 6,945 Outs 347,	6,598, 1 20	7,917 60	625 38	395 88	1,021 26	6,896 34
	92	Annan, Talmage & Co. Annan, Talmage & Co.						
		314 casks Cumberland coal, 187 1-20, *a* 23 50		4,395 68	5,161 56	219 78	5,381 34	----------
521	93	Annan, Talmage & Co. Annan, Talmage & Co.						
		50 cords wood, a $15		750 00	2,279 48	37 50	2,316 98	----------
	94	D. Barker. Crosby & Dibblee.						
	[H.]	60 boxes pepper, 200 doz., a 1 25		250 00	18 90	12 50	31 40	218 60
	96	Annan, Talmage & Co. Annan, Talmage & Co.						
	[T.] D.	60 casks glassware		2,976 07	836 09	148 80	984 89	1,991 18
	97	Annan, Talmage & Co. Annan, Talmage & Co.						
		150 nests willow baskets 450 00						
		138 " fancy " 448 50						
		25 " card " 100 00						
		30 " clothes " 240 00						
		6 " hampers " 90 00						
		12 doz. word " 84 00						
		4 " table mats 36 00						
		50 nests tubs 225 00						
		30 doz. pails 120 00						
522		25 doz. washboards 75 00						
		6 lined baskets 30 00						
		2 nests " 8 00						
		25 nests French oval baskets 75 00						
				1,981 50	467 99	99 08	567 07	1,414 43
	98	Wells & Provost D. R. Provost.						
		50 boxes syrup, 50 doz., a 4 ..... 200 00						
		23 " preserves, 46 doz., a 6 50 ..... 299 00						
		50 " do 50 doz., 6 50 ..... 325 00						
		Forward	824 00	217,825 81	36,518 62	10,891 22	47,409 84	173,637 83

Appraised value of the cargo sold at Montevideo, &c.—Continued.

Marks & Nos. of B. L.	Consignees.			Market value.	Freight.	Commissions.	Total charge.	Nett value.
		Brought forward	824 00	217,825 81	36,518 52	10,891 22	47,409 84	173,637 83
98	Wells & Provost. D. R. Provost.—Continued.							
	36 " apples, 36 doz., 7 00		252 00					
	100 " pie fruits, 100 doz, 8 00		800 00					
	50 " pepper, 100 doz., 1 25		125 00					
	100 " sauce, 100 doz., 1 00		100 00					
	50 " lemonade, 50 doz., 4 00		200 00					
	100 " peaches, 100 doz., 4 50		450 00					
	60 " apples, 60 doz., 3 00		180 00					
	135 " jams, 135 doz., 8 00		1,080 00					
	25 " jelly, 50 doz., 9 00		450 00					
	13 " " 26 doz., 5 00		130 00					
	100 " catsup, 100 doz., 1 25		125 00					
	50 " gherkins, 50 doz, 3 75		187 50					
	50 " " 50 doz., 2 37½		118 75					
				5,022 25	260 40	251 11	511 51	4,510 74
523 99	H. F. Cutter & Co.							
H. F. C. & Co.	H. F. Cutter & Co.							
	25 boxes peaches, 25 doz., a 4 50		112 50					
	50 " pie fruits, 50 doz., 4 25		212 50					
	50 " catsup, 50 doz., 1 00		50 00					
	20 " gherkins, 20 doz., 3 75		75 00					
	25 " jellies, 50 doz., 5 00		250 00					
	5 " lobsters, 5 doz., 4 00		20 00					
				720 00	45 94	36 00	81 94	638 06

100	J. J. Reamer. H. Dopmann.						
[H.D.]	75 doz. barrel covers, 150 boxes pipes, 10 boxes cards, 40 bdls. washboards,	appraised upon the invoice at.....	900 00	191 44	45 00	236 44	663 56
101	E. Goodwin & Bro. J. R. Newton & Co.						
N.	5 boxes fine solder, 500 lbs., 22.....110 00 5 " coarse " 500, 12½..... 62 50		172 50	9 25	8 63	17 88	154 62
			$224,640 56	37,025 65	11,231 96	48,257 61	179,604 81

Sales in Montevideo, and

525	Consignees.	Sales.		Nett.	Spanish.
5 & 6 S. & S.	Annan, Talmage & Co.				
	100 kegs cherry brandy, 917¾ gls., *a* 8¼	946 3			
	35 tons coal, $10	350			
			1,296 3		
	Deduct—				
	Auctioneer's charges,	80 7½			
	Duty.....	239 5¾			
	Decredero.....	25 7½			
	Commissions	64 6½			
			411 3		
				885	737 50
9	Park & White.				
	44 boxes bitters, 43½ doz.		264 7½		
	Deduct—				
	Auctioneer's charges,	12 3½			
	Duty.....	67 3¾			
	Del Credero.....	5 2¼			
	Commissions.....	13 2			
			98 3½		
				166 4	138 75
14 H. C. Hamilton.	Annan, Talmage & Co.				
	13 cs., ea. 4 boxes tobacco, 2,678 lbs., *a* 20 6½	.....	557 2¾		
	Deduct—				
	Auctioneer's charges,	26 2			
	Duty.....	167 7½			
	Del Credero.....	11 1			
	Commissions	27 7			
			233 1½		
				324 1[3]	270 16
16 & 17 A—C.	Same.				
	50 boxes tobacco, 8,000 lbs., *a* 28½.	.....	2,282 4		
	Deduct—				
	Auctioneer's charges,	107 3[3]			
	Duty.....	687 7			
	Del Credero.....	45 5[1]			
	Commissions	114 1			
			995 1		
				1,327 3	1,106 15
527 19 & 31 [B.]	D. H. Burke.				
	275 boxes schnapps, 281½ doz.	.....	893 1½		
	Deduct—				
	Auctioneer's charges,	42 ½			
	Duty.....	228 7[1]			
	Del Credero.....	17 7			
	Commissions	44 5[1]			
			333 4		
				559 5[2]	466 41
	Forward	.....	.....	3,262 6	2,718 97

value of same in San Francisco.

526 Value in San Francisco.			Nett.	Loss.
5 and 6				
100 kegs, invoice galls. 1,000; less usual outs, 50—950, *a* 1 05.	997 50			
35 tons coal, 16 75	586 25			
		1,583 75		
Deduct—				
Freight	696 06			
Commission	79 18			
		775 24		
			808 51	71 01
9				
44 boxes, 44 doz., *a* $8		352 00		
Deduct—				
Freight	27 43			
Commissions	17 60			
		45 03		
			306 97	168 22
14				
42 boxes, invoice weight 2,691 lbs., *a* 65 c.		1,749 15		
Deduct—				
Freight	31 06			
Commissions	87 45			
		118 51		
			1,630 64	1,360 48
16 and 17				
50 boxes, 8,000 lbs., 40		3,200 00		
Deduct—				
Freight	90 35			
Commissions	160 00			
		250 35	2,949 65	1,843 50
528 19 & 31				
275 boxes, equal to 275 full dozen, 10 50.		2,887 50		
Deduct—				
Freight	179 16			
Commissions	144 37			
		323 53		
			2,563 97	2,097 56
			8,259 74	5,510 77

Sales in Montevideo, and value of

		Consignees.	Sales.		Nett.	Spanish.
		Brought forward.....	.....	.....	3,262 6	2,718 97
	20	Annan, Talmage & Co.				
[E]		100 bbls. whiskey, 3,790 gls., *a* 42.	2,132 1¼			
		100 do. do. 3,709⅜, a 4.	1,854 5			
				3,986 6¼		
		Deduct—				
		Auctioneer's charges,	227 5⅜			
		Duty.....	1,009 1⅜			
		Del Credero.....	79 6			
		Commissions.....	199 2⅜			
				1,515 7⅜		
					2,470 6⅜	2,059 02
	21	Adrain & Story.				
[A.]		50 bbls. tar, 29.....	.....	184 3		
		Deduct—				
		Auctioneer's charges,	8 3½			
		Duty.....	10 7⅜			
		Del Credero.....	3 5⅜			
		Commissions.....	9 1¾			
				32 2⅜		
					152 ⅜	126 72
	24	Wilson, Fairbanks & Co.				
[T.]		30 bbls. alcohol, 1,120 gals., 918 m.	.....	1,285 1⅜		
		Deduct—				
		Auctioneer's charges,	66 3⅜			
		Duty.....	323 1⅜			
		Del Credero.....	25 5⅜			
		Commisssions.....	64 2			
				479 4⅜		
					805 4⅜	671 33
529	25	U. S. naval storekeeper.				
Comd'g officer.		100 bbls. whiskey, 3,877¼ gals.	2,665 4¾			
		24 bbls. vinegar, 944 gals.	271 3⅛			
		67 kegs butter, 2,897 lbs.	774 7⅜			
		47 bbls. rice, 11,920 lbs.	1,087 5⅜			
		26½ do do 2,890 lbs.	274 4⅜			
		3 do sugar, 810 lbs..	101 6			
		36 do do 8,282 lbs.	1,004 1⅜			
		26½ do do 2,655 lbs.	333 4⅛			
		4 do dried apples, 5,030 lbs.	528 1⅛			
		240 do beef.....	3,360			
		271 do pork.....	5,657			
		9 boxes tea, 488 lbs...	152 4			
		Forward.....	16,211 2½	.....	6,691 1¾	5,576 04

same in San Francisco.—Continued.

Value in San Francisco.			Nett.	⅓ Loss.
			8,259 74	5,540 77
20				
100 bbls., 3,997½,				
100 " 3,998—7,997½				
Less outages, 400,				
7,597½, *a* 1 20,		9,117 00		
Deduct—				
Freight	735 25			
Commissions	455 85			
		1,191 10		
			7,925 90	5,866 88
21				
50 bbls. tar, 6 50		325 00		
Deduct—				
Freight	104 13			
Commissions	16 25			
		120 38		
			204 62	77 90
24				
30 bbls. 1,243½,				
Outage, 62½,				
1,181, *a* 95		1,121 95		
Deduct—	112 46			
Freight	56 10			
Commissions		168 56		
			953 39	282 06
530 25				
100 bbls., 3,998½,				
Less 199½,				
3,799, *a* 75	2,849 25			
24 bbls., 1,020, *a* 32	326 40			
67 kegs, 3,034 lbs, *a* 33	1,001 22			
47 bbls, 26½ do } 15,032 lbs, *a* 8½	1,277 72			
39 do 26½ do } 11,957, *a* 12	1,434 84			
45½ do 5,061, *a* 12	607 32			
240 do *a* 18	4,320 00			
271 do *a* 38	10,298 00			
9 boxes, 494, *a* 50	247 00			
	22,361 75		17,343 65	11,767 61

Sales in Montevideo, and value of

	Consignees.	Sales.		Nett.	Spanish.
	Brought forward....	16,211 2½	----------	6,691 1¾	5,576 04
25	U. S. naval storekeeper. Continued.				
	38 do soap, 2,847 lbs.	199 2^{1}			
	28 do do 2,128 lbs.	159 4^{3}			
	140 do coffee, 7,000 lbs.	813 6			
	59 do cheese, 132 doz.	907 4			
	45 do tobacco, 4,872 lbs.	908 6			
	6 bales palm leaf.....	42			
			19,332 2½		
	Deduct—				
	Auctioneer's charges,	935 1^{3}			
	Duty.....	5,271 1^{1}			
	Del credero....	386 5^{1}			
	Commissions.....	966 5			
			7,559 5½		
				11,772 5½	9,810 55
26	J.Y. Hallock & Co.				
J. Y.H. & Co.	200 boxes starch, 2,400 lbs.	----------	388 4		
	Deduct—				
	Auctioneer's charges,	18 1^{2}			
	Duty	119 1^{2}			
	Del credero.....	7 6^{1}			
	Commissions.	19 3^{2}			
			164 4^{3}		
				223 7¼	186 59
531 27	M. Weissberger.				
M. W.	14 cases cheese, 3,229 lbs. 2 m.....	----------	807 2		
	Deduct—				
	Auctioneer's charges,	38 ¾			
	Duty	243 2^{1}			
	Del credero,.....	16 1^{1}			
	Commissions.	40 3			
			337 7^{1}		
				469 2^{3}	391 12
32	Annan, Talmage & Co.				
	5 cases cigars, 500 boxes 13¼ -	....	828 1		
	Deduct—				
	Auctioneer's charges,	39 7¾			
	Duty	290 3^{3}			
	Del credero	16 4½			
	Commissions	41 3¼			
			338 3¼		
				439 5^{3}	366 45
	Forward	----------	----------	19, 596 6¾	16,330 75

same in San Francisco.—Continued.

Value in San Francisco.			Nett.	Loss.
	22,361 75		17,343 65	11,767 61
25.—Continued.				
38 do } 5,016., *a* 8 / 28 do }	401 28			
140 do 7,000, *a* 22	1,540 00			
59 do 5,065, *a* 15	759 79			
45 do 5,024, *a* 25	1,256 00			
6 bales, *a* $3	18 00			
		26,336 82		
Deduct—				
Freight	2,515 13			
Commissions	1,316 84			
		3,831 97		
			22,504 85	12,694 30
26				
200 boxes, 2,400, *a* 12 c.		288 00		
Deduct—				
Freight	21 00			
Commissions	14 40			
		35 40		
			252 60	66 01
532 27				
14 cases, 3,407, 15c.				
		511 05		
Deduct—				
Freight	38 72			
Commissions	25 55			
		64 27		
			446 78	55 66
32				
5 cases, 50 M, $25				
		1,250 00		
Deduct—				
Freight	24 81			
Commissions	62 50			
		87 31		
			1,162 69	796 24
			41,710 57	25,379 82

Sales in Montevideo, and value of

	Consignees.	Sales.		Nett.	Spanish.
	Brought forward....	----------	----------	19,596 6¾	16,330 75
38	Moore & Folger.				
M. & F.	15 boxes zinc paint,				
	a 2, 3.....	213 6			
	10 kegs zinc paint, *a*				
	7.4	150			
			363 6		
	Deduct—				
	Auctioneer's charges.	17 1¹			
	Duty	55 7½			
	Del credero.....	7 2¹			
	Commissions	18 1½			
			98 4½		
				265 1½	220 99
40	Adrain & Story.				
A.	23 packages cordage,				
	2,882 lbs., *a* 17 c....	----------	496 6		
	Deduct—				
	Auction charges....	22 4³			
	Duty., ...	72 6¹			
	Del credero	9 4³			
	Commissions.....	23 7³			
			128 7½		
				350 6½	292 35
533 39	J. Y. Hallock & Co.				
J. H. Y. & Co.	500 kegs white lead, *a*				
	1.7	937 4			
	100 kegs white lead, *a*				
	3.4¼	353 1			
	25 kegs white lead,				
	2,408½, *a* 7	171 4²			
			1,462 1½		
	Deduct—				
	Auction charges	68 6½			
	Duty.....	223 2¼			
	Del credero.....	29 2			
	Commission	73 ³			
			394 3½		
				1,067 6	889 79
44	Com'd'g officer U. S. N.				
	25 bbls. pitch, *a* 5.3....	134 3			
	25 bbls. tar, *a* 5.4.....	137 4			
	11 kegs white lead, *a* 8	192			
	50 bales oakum, *a* 6.4 .	325			
	3 bbls. twine, *a* 3½	107 5			
	12 bbls. L. S. oil, *a* 11¾.	635 7³			
	1 bbl. L. S. oil, *a* 10¼..	46 6			
	10 bbls. rosin, *a* 3.1....	31 2			
	21 coils cordage, 4,119,				
	14.6²	610 1			
	24 cases canvass, 11,				
	864¼, *a* 2 05	3,040 1³			
	5 bales mattrasses, 4.7 .	268 1			
			5,528 7½		
	Forward	----------	5,528 7½	21,280 4¾	17,733 88

same in San Francisco.—Continued.

Value in San Francisco.			Nett.	Loss.
			41,710 57	25,379 82
38				
15 boxes and 10 kegs, 4,250 lbs., 12c.		510 00		
Deduct—				
Freight	22 32			
Commissions	25 50			
		47 82		
			462 18	241 19
40				
23 packages, 1,547 lbs., *a* 20 ⎫ 1,343 lbs., *a* 18 ⎭		551 14		
Deduct—				
Freight	22 76			
Commissions	27 55			
		50 31		
			500 83	208 48
534 39				
625 kegs, 20,000 lbs, *a* 10¼		2,050 00		
Deduct—				
Freight	94 50			
Commissions	102 50			
		197 00		
			1,853 00	963 21
44				
25 bbls., *a* 5	125 00			
25 bbls., *a* 6	150 00			
11 kegs, 2,583 lbs., *a* 8½c	219 56			
50 bales, 2,500 lbs., *a* 10½	262 50			
3 bbls., 250 lbs., *a* 35	87 50			
12 bbls., 1 bbl., 481 gals., *a* 1 30	625 30			
10 bbls., $3	30 00			
21 coils, 1,682, *a* 20; 2,482, *a* 18	783 16			
24 cases	2,944 90			
55 mattrasses, $6	330 00			
		5,557 92		
		5,557 92	44,526 58	26,792 70

Sales in Montevideo, and value of

	Consignees.	Sales.		Nett.	Spanish.
	Brought forward		5,528 7½	21,280 4¾	17,733 88
	Deduct—				
	Auctioneer's charges	262 7			
	Duty	754 6³			
	Del crediro	110 4½			
	Commissions	276 3½			
			1,404 5³		
				4,124 1³	3,436 86
535 46	J. Genella.				
J. [G.] G.	1 crate, 50 doz. dishes, *a* 6²	47 7½			
	1 crate, 68½ doz. cups, *a* 5	42 6½			
	1 crate, 13⅓ doz. pitchers, *a* 4.2²	58 1³			
	1 crate,72 doz. cups and saucers, *a* 5¼	47 2			
	1 crate, 34½ doz. pitchers, *a* 65½	58 7¹			
			255 1		
	Deduct—				
	Auctioneer's charges	12 ¹			
	Duty	38 7			
	Del credero	5 1			
	Commissions	12 6			
			68 6¹		
				186 2³	155 29
51	Annan, Talmage & Co.				
[E.] B.	25 bbls. alcohol, 919 gals., 1.2	1,148 6			
	150 oct. brandy, 3,272², 5 60 m	2,290 6			
			3,439 4		
	Deduct—				
	Auctioneer's charges	196 7½			
	Duty	870 6½			
	Del credero	68 6¹			
	Commissions	171 7³			
			1,308 4		
				2,131	1,775 85
58	J. M. Pomares & Co.				
	20 boxes Curacoa, 18 10-12 doz., 6.6	127 1			
	1 box Curacoa, 4 doz., 6.6	27			
	1 cask cognac, 36¼ gals., 1.6¹	64 4½			
	1 bbl. cognac, 22¼, 1	22 2			
			240 7½		
	Deduct—				
	Auctioneer's charges	11 5¾			
	Duty	60 6³			
	Del credero	4 6½			
	Commissions	12 ¹			
			89 3¹		
				151 4¼	126 25
	Forward			27,873 5½	23,228 13

same in San Francisco.—Continued.

Value in San Francisco.			Nett.	Loss.
		5,557 92	44,526 58	26,792 70
Deduct—				
Freight	585 84			
Commission	277 89			
		863 33		
			4,694 59	1,257 73
536 46.				
1 Crate	120 00			
1 do.	112 50			
1 do.	68 00			
1 do.	112 50			
1 do.	80 00			
		493 00		
Deduct—				
Freight	91 69			
Commissions	24 65			
		116 34		
			376 66	221 37
51.				
25 bbls., galls. 1,018, outs 51--967, a 1 05	1,015 35			
150 outs, galls. 3,545, outs 177--3,368, a 65	2,189 20			
		3,204 55		
Deduct—				
Freight	438 25			
Commissions	160 22			
		598 47		
			2,606 08	830 23
58.				
21 boxes	260 00			
1 cask and 1 bbl., 60 galls.				
Out 7 do. 53, a 1 25	66 25			
		326 25		
Deduct—				
Freight	25 18			
Commissions	16 31			
		41 49		
			284 76	158 51
			52,488 67	29,260 54

Sales in Montevideo, and value of

	Consignees.	Sales.		Nett.	Spanish.
	Brought forward			27,873 5½	23,228 13
537 54 W. [H.] W.	J. D. Wing. 25 bbls. whiskey, 954, 4½		536 5		
	Deduct—				
	Auctioneer's charges	30 2			
	Duty	135 5³			
	Del Credero	10 5³			
	Commissions	26 6²			
			203 4		
				333 1	277 60
55 O. [P.] W. & Co.	Crosby & Dibblee. 50 bbls. whiskey, 1,893½, 4 7-8		1,153 7		
	Deduct—				
	Auctioneer's charges	64 2			
	Duty	291 4³			
	Del Credero	23 ²			
	Commissions	57 5²			
			436 4³		
				717 2¹	597 73
56 and 59	G. O. Whitney & Co. 41 boxes chairs, 41 doz., 23. 6	973 6			
	1 box do. 2 do. 15	30			
	Deduct—		1,003 6		
	Auctioneer's charges				
	Duty	47 1¾			
	Del credero	303 6			
	Commissions	20 ½			
		50 1½			
			421 1¾		
	Annan, Talmage & Co.			582 4¼	485 44
62 V. B. & B.	1 crate crockery, 67 10-12 doz. cups and s		97 4¼		
	Deduct—				
	Auct. ch'g's	4 4½			
	Duty	14 6			
	Del Credero	1 7½			
	Commission	4 7			
			26 1		
				71 3	59 48
539 67 (S. B. & Co.)	Annan & Talmage & Co. 25 octaves cognac, 459, 106		803 5²		
	Deduct—				
	Auctioneer's charges	42 6¾			
	Duty	202 1½			
	Del Credero	16 ¼			
	Commissions	40 1³			
			301 2¼		
				502 3¹	418 66
	Forward			30,080 3¼	25,067 04

value of same in San Francisco.—Continued.

Value in San Francisco.			Nett.	Loss.
			52,448 67	29,260 54
538 54 25 bbls., 1,044 gls., 51 out; 993, a 50 c		496 50		
Deduct— Freight	78 75			
Commissions	24 82			
		103 57		
			392 93	15 33
55 50 bbls., 2,104 gls., out 105, 1,999, a 50 c		999 50		
Deduct— Freight	157 50			
Commissions	40 97			
		207 47		
			792 03	194 30
56 and 59 42 cases		655 66		
Deduct— Freight	146 79			
Commissions	32 78			
		179 57		
			476 09	
62 1 crate crockery		112 50		
Deduct— Freight	18 74			
Commission	5 60	24 34		
			88 16	28 68
540 67 25 octaves, 508¼, out 26½—482, *a* 2 25		1,084 50		
Deduct— Freight	52 07			
Commissions	54 22			
		106 29		
			978 21	559 55
			55,216 09	30,158 40

Sales in Montevideo, and value of

	Consignees.	Sales.		Nett.	Spanish.
	Brought forward...	.....	.....	30,080 3½	25,067 04
68 [H].	James Patrick & Co. 50 hf. bbls. pork, 13. 4.	....	675		
	Deduct—				
	Auctioneer's charges	31 6¹			
	Duty.....	204 2³			
	Del Credero.....	13 4			
	Commissions.....	33 6³			
			283 3³		
				391 4½	326 27
69, 70, 71, 72 [P.]	James Patrick & Co. 40 casks bacon, 31,470, a 33¼.....	4,287 6¹			
	300 boxes candles, 10,200, a 1 90m.....	2,422 4			
	699 do. do. 13,980, a 174.....	3,040 5¹			
	2 do. cigars, 200 boxes.....	375			
	1 do. tobacco, 30 do.	30			
			10,155 7²		
	Deduct—				
	Auctioneer's charges	478 1			
	Duty	3,086 3²			
	Del Credero.....	203 1			
	Commissions.....	507 6½			
			4,275 4		
541 90 A—C.	Annan, Talmage & Co. 600 boxes candles, *a* 2.4²	.....	1,537 4	5,880 3½	4,900 36
	Deduct—				
	Auctioneer's charges.	72 3			
	Duty.....	390 1			
	Del credero.....	30 6			
	Commissions.....	76 7			
			570 1		
				967 3	806 14
84 [S. & R.]	Annan, Talmage & Co. 12 pipes cologne spirits, 1,506 gls., 6 78.....	.....	1,153 ½		
	Deduct—				
	Auctioneer's charges.	56 5¹			
	Duty.....	291 5¹			
	Del credero.....	23 ½			
	Commissions.....	57 5			
			429 ¹		
				724 ¼	603 36
85 S. & Co.	Annan, Talmage & Co. 300 boxes raisins, 1.7...	562 4			
	138 " ditto 7¼....	125 ½			
			687 4½		
	Forward.....	.....	687 4½	38,043 6¼	31,703 17

same in San Francisco.—Continued.

Value in San Francisco.			Nett.	Loss.
			55,216 09	30,158 40
68				
50 half-barrels, $22		1,100 00		
Deduct—				
Freight	63 00			
Commissions	55 00			
		118 00		
			982 00	655 73
69 & 72				
40 casks, 32,099, *a* 23	7,382 77			
999 boxes, 24,180, 30	7,254 00			
2 cases, 20,000, $25	500 00			
1 case, 15 galls., 6	90 00			
		15,226 77		
Deduct—				
Freight	559 37			
Commissions	761 33			
		1,320 70		
			13,906 07	9,005 71
542 90				
600 boxes, 3.75		2,250 00		
Deduct—				
Freight	546 10			
Commissions	112 50			
		658 60		
			1,591 40	785 26
84				
12 pipes, 40 per cent. above proof, 2,228, outs, 114—2,168, *a* 84c		1,821 12		
Deduct—				
Freight	149 57			
Commissions	91 05			
		240 62		
			1,580 49	977 13
85				
300 boxes, $8	2,400 00			
138 h'f do., 6	828 00			
		3,228 00		
		3,228 00	73,276 05	41,582 23

Sales in Montevideo, and value of

	Consignees.	Sales.		Nett.	Spanish.
	Brought forward		687 4½	38,043 6¾	31,703 17
	Deduct—				
	Auctioneer's charges	32 2³			
	Duty	139 7¼			
	Del credero	13 6			
	Commissions	34 3			
			220 3		
88	Annan, Talmage & Co.			467 1²	389 32
[W. J.] S.	100 bbls. alchohol, 3,725¾ gls., *a* 10⅛		4,715 3¹		
	Deduct—				
	Auct. ch'g's	242 1			
	Duty	1,184 3			
	Del credero	922 2			
	Commission	235 6			
			1,756 3¾		
				2,958 7½	2,465 78
543 89	Annan, Talmage & Co.		843 6		
C—D.	5 cases cigars, 500 boxes, *a* 13½.				
	Deduct—				
	Auctioneer's charges	39 5½			
	Duty	295 7½			
	Del credero	16 7			
	Commissions	42 1³			
			394 5½		
				449 ½	374 21
91	Annan, Talmage & Co.				
S' [R.]	250 octaves cognac, 5,104½ gls., 670 m.		4,275 ¼		
	Deduct—				
	Auctioneer's charges	251 2½			
	Duty	1,076 4½			
	Del credero	85 4			
	Commissions	213 6			
			1,627 ¾		
				2,647 7½	2,206 61
100	H. Dopmann.				
[H. D.]	1 case, 873 lbs, cord	218 2			
	16 doz. faucetts, 2m	32			
			250 2		
	Deduct—				
	Auctioneer's charges	11 6			
	Duty	37 5¼			
	Del credero	5			
	Commissions	12 4			
			66 7¼		
				183 2³	152 78
545 99	H. F. Cutter & Co.				
H. F. C.	5 boxes lobsters, 5 doz, 14.	70			
	24 do. jellies, 48 doz., 4. 4.	216			
			286		
	Forward		286	44,750 2	37,291 87

same in San Francisco.—Continued.

Value in San Francisco.			Nett.	Loss.
----------	----------	3,228 00	73,276 05	41,582 23
Deduct—				
Freight----------	177 59			
Commissions----------	161 40			
		338 99	2,889 01	2,499 69
88				
100 bbls., gals. 4,201; outs 210—3,991, *a* 1 05.	----------	4,190 55		
Deduct—				
Freight----------	439 95			
Commissions----------	209 52			
		649 47		
			3,541 08	1,075 30
544 89				
5 cases 50 M., *a* $25----------	----------	1,250 00		
Deduct—				
Freight----------	28 67			
Commissions----------	62 50			
		91 17		
			1,158 83	784 62
91				
250 octaves, at proof, 6,945; outs, 374—6,598, *a* 1 20.	----------	7,919 60		
Deduct—				
Freight----------	625 38			
Commissions----------	395 88			
		921 26		
			6,896 34	4,689 73
100				
1 case and 16 doz. ----------	----------	131 80		
Deduct—				
Freight----------	9 55			
Commissions----------	6 59			
		16 14		
			115 66	----------
546 99				
5 boxes lobsters, 4----------				
24 do. jellies, 5----------	20 00			
	240 00			
		260 00		
---------- ----------	----------	260 00	87,876 97	50,631 57

Sales in Montevideo, and value of

	Consignees.	Sales.		Nett.	Spanish.
	Brought forward----	----------	286	44,750 2	37,291 87
	Deduct—				
	Auction charges----	13 3[3]			
	Duty------	57 7[2]			
	Del Credere ------	5 6			
	Commissions- ------	14 2[2]			
			91 3[3]		
				194 4[1]	162 11
98	D. R. Provost.				
D. R. P.	25 boxes preserves, 4. 4	112 4			
	25 do do 3	75			
	23 do do 3. 1	143 6			
	134 do jams 5	670			
	35 do jellies 3. 6[2]	266 7			
			1,268 1		
	Deduct—				
	Auction charges.----	59 6[2]			
	Duty. ---- --------	257 6[1]			
	Del credere---- ----	25 3			
	Commissions. ------	63 3[1]			
			406 3		
				861 6	718 12
97	Annan, Talmage & Co.				
	11 5-12 doz. baskets, 6	----------	68 4		
	Deduct—				
	Auction charges----	3 1[2]			
	Duty---- ----------	10 5½			
	Del credere---- ----	1 3			
	Commissions. ------	3 3½			
			18 5[2]		
				49 6½	41 51
547	Annan, Talmage & Co.				
	214 casks Cumberland coal, 6. 5.	----------	1,417 6		
	Deduct—				
	Auctioneer's charges-	72 4			
	Duty-------- ------	----------			
	Del credere---- ----	28 2[3]			
	Commissions. ------	70 7			
			171 5[3]		
				1,246 ¼	1,038 36
	Total nett sales of goods in Montevideo.	----------	----------	47,102 3	39,251 97

same in San Francisco.—Continued.

Value in San Francisco.			Nett.	Loss.
		260 00	87,876 97	50,631 57
Deduct—				
Freight	7 61			
Commissions	13 00			
		20 61		
			239 39	77 28
98				
50 boxes, 6.50	325 00			
25 do. 46 doz., 6.50	299 00			
134 do. 8	1,072 00			
25 do. 9	450 00			
10 do. 5	50 00			
		2,196 00		
Deduct—				
Freight	63 53			
Commissions	109 80			
		173 33		
			2,022 67	1,304 55
97.				
11 5-2 doz., $9		102 75		
Deduct—				
Freight	26 46			
Commissions	5 14			
		31 60		
			71 15	29 64
548				
214 casks, 1291, T., 8, 1, 14, *a* 23 50		3,053 09		
Deduct freight	3,517 75			
commission	152 65			
		3,670 40		
Nett appraised value in San Francisco			90,210 18	
Nett sales in Montevideo			39,251 97	
Excess of sales over value in S. F., viz:			50 958 21	
56 & 59		9 35		
100		37 12		
92		1,038 36		
			1,084 83	
Actual loss to owners of goods				52,043 04
Amount of freight not earned thereupon				12,524 08
Actual cost of raising funds				64,567 12

549 *Freights on goods sold in order raise funds.*

		Annan, Talmage, & Co.	
	5	100 kegs brandy	696 06
	6	35 tons coal	
		Park & White.	
	9	44 boxes bitters	27 43
		Annan, Talmage & Co.	
		13 cases tobacco	31 06
		Do.	
	16 & 17	50 boxes tobacco	90 35
	19 & 31	D. H. Burke.	
		275 boxes schnappes	179 16
	20	Annan, Talmage & Co.	
		200 bbls whiskey	735 25
	21	Adrain & Story.	
		50 bbls. tar	104 13
	24	Jones & Stevens.	
		30 bbls. alcohol	112 46
	25	U. S. naval storekeeper.	
		100 bbls. whiskey	
		24 do. vinegar	
		67 do. butter	
		47 do. rice	
		26 h'f do. do	
		3 lbs. sugar,	
550		36 bbls. sugar	
		26½ do. do	
		45 do. dried apples	2,515 13
		240 do. beef	
		271 do. pork	
		9 boxes tea	
		38 do. soap	
		28 do. do	
		140 do. coffee	
		59 do. cheese	
		45 do. tobacco	
		6 bales palm leaf	
	26	J. Y. Hallock & Co.	
		200 boxes starch	21 00
	27	M. Wiessberger.	
		14 cases cheese	38 72
	32	Annan, Talmage & Co.	
		5 cases cigars	24 81
	38	Moore & Folger.	
		15 boxes and 10 kegs paint	22 32
	39	J. Y. Hallock & Co.	
		625 kegs white lead	94 50
	40	Adrain & Story.	
		23 pkgs. cordage	22 76
551	44	U. S. naval storekeeper.	
		25 bbls. pitch	
		25 bbls. tar	
		11 kegs white lead	
		50 bales oakum	
		3 bbls. twine	
		12 bbls. L. S. oil	585 44
		1 do do	
		10 bbls. rosin	
		21 coils cordage	
		24 cases canvas	
		5 bales mattrasses	
		Forward	5,390 58

Freights on goods sold in order raise funds.—Continued.

		Brought forward	5,300 58
	46	J. Genella.	
		5 crates crockery	91 69
	51	Annan, Talmage & Co.	
		25 bbls. alcohol 150 8ths brandy	438 25
	54	J. D. Wing.	
		25 bbls. whiskey	78 75
	55	Crosby & Dibblee.	
		50 bbls. whiskey	157 50
	58	J. M. Pommares & Co.	
		21 boxes curacoa, 1 cask and 1 bbl. cognac.	25 18
	56 & 59	G. O. Whitney & Co.	
		42 boxes chairs	146 79
552	62	Annan, Talmage & Co.	
		1 crate crockery	18 74
	67	25 bbls. cognac	52 07
	90	600 boxes cider	546 10
	84	12 pipes liquor	149 57
	85	300 boxes raisins 138 h'f do do	177 59
	88	100 bbls. alcohol	439 95
	89	5 cases cigars	28 67
	91	250 bbls. cognac	625 38
	97	11 5-12 doz. baskets	26 46
	92	214 casks coal	3,517 75
	68	James Patrick & Co.	
		50 hf. bbls. pork	63 00
	69	40 casks bacon	386 64
	70	999 boxes candles	158 81
	71	2 cases cigars	9 77
	72	1 box tobacco	4 15
554	100	H. Dopmann.	
		1 case cards	9 55
	99	H. F. Cutter & Co.	
		29 boxes lobsters and jellies	7 61
	98	D. R. Provost.	
		242 boxes preserves	63 53
		Total	12,524 08

555 *Apportionment.*

Vessel—			
In her insured value, less cost of repairs	33,440 00	24 18-100 p.c.	8,085 81
Freight—			
Being one-half of the amount earned	18,566 82	"	4,488 48
Cargo—			
At its net market valuation	179,604 81	"	43,428 43
	$231,607 63	pays	50,002 72

556 No. B. of L.	Consignees.—Shippers.	Contributory value.	Contribution.
3	Annan, Talmage & Co. N. Dougherty	84 22	20 36
4	Ditto. Annan, Talmage & Co	1,609 16	389 08
5	Ditto. Ditto	846 57	204 69
14	Ditto. Ditto	1,630 64	394 28
16 & 17	Ditto. Ditto	2,949 65	713 22
20	Ditto. Ditto	7,925 90	1,916 49
21	Adrain & Story. J. H. Atkins & Co	204 62	49 46
557 32, 32	Annan, Talmage & Co. Annan, Talmage & Co	1,162 69	281 15
51	Ditto. Do. for Augustus Embury	2,606 08	630 14
67	Ditto. Carr, Burnett & Oldner	978 21	236 55
84	Ditto. Annan, Talmage & Co	1,580 49	582 18
85	Ditto. Ditto	2,889 01	698 50
86, 87, 95	Ditto. Ditto	994 56	240 48
89	Ditto. Ditto	1,158 83	280 18
558 90	Annan, Talmage & Co. Annan, Talmage & Co	1,590 40	384 81
91	Ditto. Ditto	6,896 34	1,667 54
88	Ditto. Ditto	3,541 08	856 22
96	Ditto. Ditto	1,991 18	480 48
97	Ditto. Ditto	1,414 43	341 92
40	Adrain & Story. J. Atkins &Co	1,027 48	248 44
76	Ditto. E. W. Page	92 77	22 41
559 7	Brewster, R. E., & Co. P. H. Fay & Co	719 25	173 91
15	Baker Frank. Albro & Hoyt	3,683 06	890 56
45	Ditto. C. Constant	437 65	105 88
52	Ditto. M. A. Howell & Co	1,083 26	261 93
19 & 31	Burke, D. H. Udolfo Wolfe	2,563 96	619 99
27	Bond & Hale. M. Weisberger	446 78	108 06
30	Brown, S. R. John Murphy	86 66	20 95
	Forward	52,195 83	12,620 92

No. B. of L.		Consignees.—Shippers.	Contributory value.	Contribution.
		Brought froward	52,195 83	12,620 92
560	47	Bithell, James: Leavitt, Trow & Co	1,381 36	334 02
	53	Booth, Edwin. George Booth & Sons	175 92	42 54
	62	Bernard, Eger & Co. Annan, Talmadge & Co	1,565 45	378 52
	63	Ditto. Ditto	614 24	148 51
	77	Ditto. Ditto	250 18	60 51
	78	Ditto. Ditto	563 25	136 78
	81	Ditto. Ditto	672 90	162 71
561	12	Clark, J. W. C. Rockwell	210 01	50 78
	36 & 37	Conroy & O'Connor. Conroy & O'Connor	4,927 94	1,191 59
	64	Bragg, Rallinson & Co. E. S. Junis	293 25	70 91
	74	Carson, W. McK. R. Sinclair & Co	471 98	114 13
	55	Crosby & Dibblee. O. W. Pollitz & Co	792 02	191 51
	94	Ditto. D. Barker	218 60	52 87
	99	Cutter, H. F., & Co. H. F. Cutter & Co	638 06	154 27
562	100	Dopmann, H. J. J. Reimer	663 56	160 44
	66	Eells, R. S., & Co. R. & A. W. Ball	545 10	131 81
	2	Flint, Peabody & Co. C. H. Coffin	70 43	17 04
	22	E. Fitzgerald & Co. W. A. Roberts	380 01	91 89
	73	E. Frank. E. Frank	167 32	40 47
	46	Genella, J. J. Wolfe	1,480 79	358 05
	1	Geo. Howes & Co. Geo. Howes	173 98	42 04
563	29	Hoag, J. N. & B. H. Dow & Fowler	7,483 24	1,809 46
	26	Hallock, J. Y., & Co. W. Colgate & Co	1,330 30	314 40
	39	Ditto. R. ditto, (R. Colgate & Co)	1,853 00	448 05
	50	Ditto. J. H. Eckley	167 18	40 42
	60	Ditto. C. H. Hallock	483 23	116 85
	42	Hudson, H. C. Haviland, Harold & Risley	171 09	41 37
	11	Jennings & Brewster. A. Jennings	203 73	49 26
		Forward	79,910 22	19,332 26

No. B.	of L.	Consignees.—Shippers.	Contributory value.	Contribution.
		Brought forward	79,910 22	19,332 26
564	24	Jones & Stevens. Wilson, Fairbanks & Co	953 40	230 55
	79	Jenny, J. T. J. T. Jenny	308 84	74 67
	61	Kewen & Gallagher. D. W. Colgan	741 26	179 20
	43	Langley, C. & J. J. C. H. Ring	683 53	165 27
	18	Mercantile Library Co. C. B. Norton	63 35	15 33
	38	Moore & Folger. Manning & Squier	870 00	210 39
	75	Moigneau, L. Schiefflen, Bros. & Co	675 44	163 32
565	23	Nelson, A. T. Allen, Low & Roberts	228 89	55 35
	83	Newton, J. R., & Co. E. Goodwin & Bro	740 40	179 03
	101	Newton, J. R., & Co. Ditto	154 62	37 39
	9	Park & White. Hostetter & Smith	347 84	84 14
	58	Pomares, J. M., & Co. J. Giraud & Co	293 07	70 85
	68	Patrick, J., & Co. James Patrick	2,455 00	593 64
	39	Ditto. Ditto	6,627 00	1,602 42
566	70	Ditto. Ditto	6,732 49	1,627 94
	71	Ditto. Ditto	930 47	224 94
	72	Ditto. Ditto	162 70	39 34
	98	D. R. Provost. Wells & Provost	4,510 74	1,090 73
	10	Rice & Coffin. G. W. Westbrook	159 98	38 68
	57	Rasenfeld, E. & J. J. H. Bergman & Co	82 14	19 84
	8	Uperdegraff, C. H. J. Brewsters & Sons	1,012 94	244 94
567	25 & 44	United States naval storekeeper. J. D. Gibson	48,486 75	11,724 09
	41	Ditto. D. E. Delavan	11,604 00	2,805 85
	82	Ulmer, Feigenbaum & Co. Ulmer, Feigenbaum & Co	5,986 31	1,447 48
	28	Van Vleet, E. J. S. S. Rapplee & Co	534 76	129 30
	13	Webb, C. C. C. Rockwell	407 19	98 44
	34	Wines, G. H. & Co. William Hall & Sons	466 92	112 90
	33	Ditto. Ditto	449 48	108 68
		Forward	176,783 46	42,746 22

No. B. of L.	Consignees.—Shippers.	Contributary value.	Contribution.
	Brought forward	176,783 46	42,746 22
568 35	Wells, Fargo & Co. John Van Ness	550 12	133 00
49	Wilson, J., & Sons. John Wilson	368 27	89 04
54	Wing, J. D. W. H. Westervelt	392 93	93 05
56 & 59	Whitney, G. O., & Co. Irving & Clark	1,510 03	365 14
	Total net value of cargo and contribution	$179,604 81	$42,428 43

Endorsed: Filed May 12th, 1866. Geo. C. Gorham, clerk, by S. Neall, D. C.

SCHEDULE A.

Expenditure of the ship "Star of Hope," at Montevideo.

Cost of coppering.	Bills.	General average.	Repairs to vessel.		Owners.
			½ off for new.	All.	
	U. S. CONSULATE.				
	For deposit of papers	5 99			
	noting protest and recording shipping list	1 50			
	orders for seven surveys	3 50		3 50	
	3 estimates of cost of repairs			3 00	
	orders for seamen to hospital				6 00
	extending and recording protest	1 25		1 25	
	3 certified copies of protest	3 75		3 75	
	7 do. orders for surveys	26 25		26 25	
	7 do. reports do.	26 25		26 25	
	3 do. protest	12 00		12 00	
	3 do. orders for estimates			22 50	
	3 do. reports of same	7 50		22 50	
	3 do. surveys on cargo landed	7 50			
	3 do. signatures to damage				3 00
	discharging seamen				13 00
	shipping 13 men	5 00		5 00	3 50
	certificates to ac. sales of signatures	2 50		3 50	75
	do. bills	2 00		3 00	1 00
	3 certificates of currency				2 25
	certificate to articles	2 50			
	Spanish certificate of crew-list				

	SURVEYORS.			
	Robert B. Hallett:			
	Four surveys on vessel	16 00	16 00	
	Albert Jewett:			
	Four surveys on vessel	16 00	16 00	
	Luther Manson:			
	Two surveys on vessel	8 00	8 00	
	E. Burnham:			
	One survey on vessel when out		16 00	
570	Edw. Upton:			
	One survey on vessel when out	8 00		
	One general survey		32 00	
	Thos. Frenhagen;			
	Two surveys on vessel when out	8 00		
	One general survey		32 00	
	R. S. Thomas:			
	Three surveys on vessel	8 00	32 00	
	John Laws:			
	Four surveys on vessel			579 22
	Chas. Spotorno:			
	For bill of provisions, not specified			
		171 49	300 50	608 72
	In Spanish currency	205 6	360 5	730 4
	Reduced into Montevideo currency, at 83⅓ c.			
	Abel C. Brown:			
	For cooperage on cargo, injured in breaking out, discharge and storage, viz:			
	106 hhds. coal trimmed	39 6		
	69 iron hoops	25 7		
	168 bbls. spirits coopered	42		
	111 iron hoops	27 6		
571	And for strapping 360 small packages	45		
	83 bbls. beef	20 6		
	17 iron hoops	4 2		
	8 barrels spirits	2		
	16 iron hoops	4		
	73 large boxes	18 2		
	Forward	435 3	360 5	730 4

Expenditure of the ship "Star of Hope," at Montevideo.—Continued.

Cost of coppering.	Bills.	General average.	Repairs to vessel.		Owners.
			⅓ off for new	All.	
	Brought forward	435 3		360 5	730 4
	Abel C. Brown—continued.				
	For 35 barrels	4 3			
	4 kegs paint oil	1			
	2 iron hoops		4		
	10 kegs paint	1 2			
	3 hogsheads		6		
	4 pipes of spirits	3			
	For coopering the cargo re-embarked, injured in its removal from the warehouses to the vessel:				
	5 hhds. coal	1 7			
	6 iron hoops for same	2 2			
	82 large boxes	20 4			
	244 small do	30 4			
	37 bbls. beef	9 2			
	4 iron hoops	1			
	4 heads	2			
	4 water-casks	1			
	5 iron hoops	2 2			
	8 boxes	7			
	8 bbls. pork	2			
	[illegible] iron hoops	1			
	48 staves	12			
572	4 hhds	1 4½			
	113 ft. lumber	7			
	6 kegs paint, 6 r.; 4 iron hoops, 4 r.	1 2			
	In currency	548 5½		360 5	730 4

Restored to Spanish	457 20		300 50	608 72
Chas. W. Parsons, jr.:				
For lighterage of cargo landed and reshipped, viz:				
7,975 packages landed	498 43			
4,727 do. embarked	295 43			
480 do. landed	120 00			
328 do. embarked	95 50			
45 do. landed and reshipped	44 00			
87 large cases do.	348 00			
2,787 barrels landed	348 37			
660 do. embarked	82 50			
436 casks landed	218 00			
170 do. reshipped	85 00			
11 bbls. loaded and reshipped	11 00			
98 bales rope landed	12 25			
6 large coils rope landed and reshipped	12 00			
42 crates crockery landed	21 00			
36 do. reshipped	18 00			
688 kegs paint landed	20 63			
264 bars iron landed and reshipped	15 84			
154 bundles do.	38 50			
12 anvils do.	3 00			
28 packages do.	7 00			
573 182 nests baskets landed	5 40			
150 do. reshipped	4 50			
130 do. landed and reshipped	7 50			
50 tubs in nests do.	12 50			
30 doz. palls	7 50			
4 bales	4 00			
6 nests	1 50			
70 bundles	8 75			
65 doz. wash boards	8 13			
3 pieces machinery	6 00			
84 prs. or sets of hubs	3 66			
70 bundles spokes	8 75			
50 cords of wood	125 00			
112 oak planks	7 00			
Forward	2,961 84		300 50	608 72

Expenditure of the ship "Star of Hope," at Montevideo.—Continued.

Cost of coppering.	Bills.	General average.	Repairs to vessel.		Owners.
			⅓ off for new.	All.	
	Brought forward	2,961 84		300 50	608 72
	Chas. W. Parsons, jr.,—continued.				
	For 35 tons coal landed	14 00			
	200 do. transhipped	96 00			
	9 nights watching goods	18 00			
	2 lighter loads provisions landed	30 00			
	2 do. reshipped	30 00			
	Moving anchor to moorship while discharging	6 00			
	Joseph Coelho:				
	For an anchor to replace one slipped	145 00			
	boat hire for survey	4 00			
	do. captain	7 00			
	1,160 gallons water				11 60
	246 lbs. manila rope, used for falls to discharge cargo and peonage	61 25			
	boat hire for seamen				50
	100 lbs. potatoes				4 00
574	salt				42
	wafers				22
	63 lbs. potatoes				2 52
	246 lbs. manilla rope for tackle, as before	61 00			
	peonage	12			
	6 lbs. nails for cargo	60			
	labor of 4 men	6 00			
	1 bottle of red ink				25
	61 lbs. potatoes				2 44
	900 gallons water				9 00
	64 lbs. potatoes				2 56
	2 shovels for discharging coal	1 67			
	80 lbs. potatoes				3 20

2 wheelbarrows for coal	16 00			
2 shovels for coal	1 67			
55 lbs. potatoes				8 20
600 gallons water				2 52
63 lbs potatoes				2 33
52 lbs. potatoes and boat hire				6 20
62 lbs. rice				2 00
50 lbs. potatoes				4 50
9 lbs. butter				21 50
43 lbs. tea				50
boat hire				3 00
300 gallons water	59 50			
238 lbs. manilla rope for falls				3 00
30 lbs. flour	111 25			
445 lbs. hemp rope, for falls	1 00			
boat hire				1 60
40 lbs. potatoes		2 50		
4 ship scrapers				1 60
40 lbs. potatoes		8 60		
86 lbs. kiar rope				19 50
26 gallons molasses				7 00
700 gallons water				75
boat hire				75
3 lbs. coffee				25
boat hire				25 00
200 lbs. sugar				80
20 lbs. potatoes	2			
black lead for discharging in fall blocks				5 85
58½ lbs. soap				50
brass bush				1 50
4 lbs. black pepper		24 00		
8 lbs. black paint		35 00		
21 gallons paint oil		6 25		
5 gallons turpentine		2 50		
10 lbs. litharge				4 50
450 gallons water		9 00		
3 kegs white lead				
Forward	3,632 52	87 85	300 50	768 78

575

Expenditure of the ship "Star of Hope," at Montevideo.—Continued.

Cost of coppering.	Bills.	General average.	Repairs to vessel.		Owners.
			½ off for new.	All.	
	Brought forward	3,632 52	87 85	300 50	768 78
	Joseph Coelho—continued.		1 75		
	For 4 paint brushes				25
	4 tins blacking				32
	2 brushes				3 34
	1 kettle and ladle				50
	1 tormentor	6 00			
	2 winches hired for hoisting cargo	3 34			27 50
	4 shovels to discharge coal				50
	300 lbs. bread				25
	2 tin pots and 2 tin plates				5 25
	2 table spoons				6 00
	14 lbs. butter				
576	600 gallons water	10 50	3 00		
	105 lbs. nails for coopering cargo				4 00
	30 lbs. spikes				27 50
	25 lbs. coffee				50
	300 lbs. bread				60
	25 lbs. salt				24 95
	3 jars for salt				50
	2,495 gallons water				25
	eggs				11 00
	peonage on potatoes				4 00
	potatoes				38
	25 lbs. coffee				
	advertising	20 75			
	83 lbs. cordage for slings	1 50			
	3 lbs. twine for seizings for slings	75			
	6 skeins marline for do				

2 lbs. whipping twine for do	1 00			
23 lbs. hide rope for wheel		8 62		
3 bees-wax		11 50		
30 yards bagging for cargo	3 75			
141 lbs. manilla used in discharging	35 25			
6 marline spikes				3 00
3½ pounds paint		1 46		
pump leather		9 00		
100 lbs. black paint		12 00		
blacksmithing		8 25		
10 lbs. candles				1 67
200 lbs. coffee				32 00
10 lbs. butter				3 12
1 bag				25
3 pounds ground pepper				1 12
peonage				37
577 tinsmith				50
17 brooms				1 70
2 doz. common do.				75
1½ lbs. copper tacks				1 50
6 gallons olive oil				10 00
10 " paint oil		16 66		
17 lbs. whiting				85
1 bbl. flour				16 00
200 lbs. bread				18 34
1,620 gallons water				16 20
stock for anchor replaced	84			
18 sail needles				75
24 tins beef				16 80
12 doz. eggs				2 40
1 bbl. tar				7 00
300 lbs. bread				27 50
1 doz. corn brooms				4 50
peonage				12
38 lbs. bread				3 50
3 panes glass				50
200 lbs. corn				12 50
Forward	3,716 20	160 09	300 50	1,069 31

Expenditure of the ship "Star of Hope," at Montevideo.—Continued.

Cost of coppering.	Bills.	General average.	Repairs to vessel.		Owners.
			⅓ off for new.	All.	
	Brought forward	3,716 20	160 09	300 50	1,069 31
	Joseph Coelho—continued				
	For 2 bags for do				50
	sundry supplies				9 00
	blacksmithing		13 90		
578	sugar and coffee				27 00
	1,900 gallons water				19 00
	John Lawes:				
	For the following work performed agreeably to contract and specified as follows, preliminary to heaving down:				
	oakum, pitch, tar, oil, lumber and hard wood plank		650 00		
	services of ship wright engaged in removing sheathing from stern, fastening planks, and replacing stern sheathing; two new planks in the side mouldings, &c., 120 days, a $3.		360 00		
	services of caulkers in caulking the ship from copper line to plank shear, timber heads, stanchions, water ways, deck, poop and top gallant forecastle, in board and out, cabin deck, forecastle and galley deck, and quick work around the bow, 1,350 days, a $3.		4,050 00		
	90 days labour of boys, 1 50		135 00		
	master shipwright and caulkers		500 00		
	carved wood for stern		30 00		
	334 days labor preparing to heave down		1,152 00		
	150 do. heaving down twice		900 00		
	60 floating stages		150 00		
	240 hanging do		240 00		
	30 pitch pots and mops		7 50		
	use of ring bolts, spars for out riggers to shore the masts and decks;		280 00		
579	chain warps, blocks and falls to secure the out riggers and lashings for				

	spars.				
	boat hire for workmen		50 00		
	use of pontoons, blocks, and falls to heave the vessel down, lashings for blocks and all other things necessary to heave down, and bolts of fas ten planks.		2,000 00		
	boat hire for workmen while hove down		108 00		
	blacksmith's bill		12 00		
	porterage and boat hire transporting material		25 00		
	repairing port side of vessel, viz:				
	oak plank		50 00		
	4 bbls. Swedish tar		60 00		
	2 " tar		30 00		
1,080 00	400 lbs. of oakum		60 00		
275 00	300 sheets copper				
	550 lbs. copper nails				
85 00	155 " bolts and spikes		77 50		
	paper for copper				
	expenses heaving down to repair bottom		500 00		
	stripping copper with care, in order to replace it after repairing vessel		624 00		
	52 shipwrights		780 00		
	4 boys, 7 days ea., a 1½		42 00		
	7 stages, 4 days ea., a 2½		70 00		
	boat hire		30 00		
	repairs effected upon starboard side:		60 00		
	4 bbls. Swedish tar		30 00		
	2 " tar		60 00		
720 00	400 lbs. oakum				
368 50	200 sheets copper				
	550 lbs. copper nails		85 00		
580	paper to put under copper				
	expenses heaving down		300 00		
	52 shipwrights, 1 day, a $6		312 00		
	52 men 4 days, a 3		624 00		
	4 boys 6 days, a 1½		36 00		
	7 stages, 3 days, a 2½		52 00		
	boat hire		30 00		
2,528 50	Forward	3,716 20	14,736 49	300 50	1,124 81

Expenditure of the ship "Star of Hope," at Montevideo.—Continued

Cost of coppering.	Bills.	General average.	Repairs of vessel.		Owners.
			⅓ off for new.	All.	
2,528 50	Brought forward	3,716 20	14,736 49	300 50	1,124 81
	John Lawes—continued.				
	For 1 anchor stock, for one lost by slipping	30 00			
	porterage and cartage on landing spars	15 00			
	hulk hire used to receive the coal	175 00			
	J. B. Capurro:				
	For rent of store house for four months, for use of cargo while vessel was being repaired.	2,000 00			
	James Cibets:				
	For rent of store ship "Felix," for 2 months for storage of coal	833 34			
	E. Antonini:				
	For rent of store house for storage of 134 cords of wood	54 06			
	landing and reshipping same	27 91			
189 41	Robert Robinson:				
581	For 50 sheets yellow metal, 353; 1 keg nails, 50—407 lbs., a 47 c				
	C. W. Parsons, jr.:				
	For 1 barrell sugar				
	1 do. rice				32 37
	4 boxes raisins				23 80
	3 coils ratline, 3 lbs; marline, used for lashings and seizings for discharging tackles.	80 00			16 00
	9 lbs. cotton twine				
	3 boxes zinc paint		4 50		
	G. B. Chiesm:		45 00		
	For gilding stern and repairing arm of figure				
	John H. Thatcher:		35 00		
	For services as clerk in taking ac. of cargo	96 00			
	Franco. Bernison:				
	For boat hire in attendance upon vessel while discharging and repairing	155 00	155 00		

	A. Somerby:				
	For cash for boat hire	2 50			
	vegetables				5 11
	labor in discharging cargo	190 50			
	fish				1 20
	pilot	2 00			
	cook				10 52
582	labor discharging cargo	30 50			
		24 00			
		115 50			
	master's board				154 50
	crew's do				13 50
	labor reshipping and stowing cargo	163 80			
	seamen's wages				298 02
	labor for	41 03			
	Vincenti Perez:				
	For receiving, stowing, and reshipping cargo, viz	1,934 29			
	It is impossible to glean from some of the bills the particular nature of service or supplies furnished. Some of the work, it appears, has been performed over and over, and separation of acs. almost impracticable.				
	Southgate & Co.:				
	For Escribano's fees for register	13 34			
	stamp for same	25 00			
	tonnage dues	249 58			
	guard money	100 00			
	hospital and bill of health	9 75			
	health visit and boat hire	5 96			
	pilotage for removing vessel	37 18			
	cash to master				1,213 83
	gratificacion to custom-house officer	175 50			
	boat hires at various times	7 30			
583 135 90	Commissions:				
	5 pr. c. apportioned	515 50	748 80	15 00	144 70
2,853 81	Forward	10,825 75	15,724 79	315 50	3,038 36

Expenditure of the ship "Star of Hope," at Montevideo.—Continued.

Cost of coppering.	Bills.	General average.	Repairs to vessel.		Owners.
			⅓ off for new.	All.	
2,853 81	Brought forward	10,825 75	15,724 79	315 50	3,038 36
	For landing, taking charge of the cargo, and attending to its reshipment—estimated value 100,000, *a* 2½.	2,500 00			
2,853 81		13,325 75	15,724 79	315 50	3,038 36
	A Somerby:				
	Boat hires	10 00			
	Blacksmith's bill	4 33	11 00		
	Pilotage to sea	32 00			
	Supplies				35 36
	Chronometer rate				9 00
2,853 81		13,372 08	15,735 79	315 50	3,082 72
	Totals—Copp'g				2,853 81
	G. A.				13,372 08
	P. L. ⅓				15,735 79
	P. L. 3-3				315 50
	Owner				3,082 72
					35,359 90

Loss sustained by sale of goods at Montevideo to defray expenses.

Number of manifest.	Shippers and consignees.	Net proceeds in Montevideo.	Value in San Francisco.	Freight and com. to be deducted.	Net loss.
5 & 6	Annan, Talmage & Co.				
	Annan, Talmage & Co	737 50	1,583 75	775 24	71 01
9	Hostetter & Smith.				
	Park & White	138 75	352 00	45 03	168 22
14	Annan, Talmage & Co.				
	Annan, Talmage & Co	270 16	1,749 15	118 51	1,360 48
16 & 17	Ditto.				
	Ditto.	1,106 15	3,200 00	250 35	1,843 50
19 & 31	Udolpho Wolfe.				
	D. H. Burke	466 41	2,887 50	323 53	2,097 56
20	Annan, Talmage & Co.				
	Annan, Talmage & Co	2,059 02	9,117 00	1,191 10	5,866 88
21	J. H. Atkins & Co.				
	Adrain & Story	126 72	325 00	120 38	77 90
24	Wilson, Fairbanks & Co.				
	Jones & Stevens	671 33	1,121 95	168 56	282 06
25	John D. Gibson, &c.				
	U. S. naval storekeeper	9,810 55	26,336 82	3,831 97	12,694 30
26	Wm. Colgate & Co.				
	J. Y. Hallock & Co.	186 59	288 00	35 40	66 01
27	M. Weissberger.				
	Bond & Hale	391 12	511 05	64 27	55 66
585 32	Annan, Talmage & Co.				
	Annan, Talmage & Co	366 45	1,250 00	87 31	796 24
38	Manning & Squier.				
	Moore & Folger	220 99	510 00	47 82	241 19
	Forward	16,551 74	49,232 22	7,059 47	25,621 01

Loss sustained by sale of Goods at Montevideo to defray expenses.—Continued.

Number of manifest.	Shippers and consignees.	Net proceeds in Montevideo.	Value in San Francisco.	Freight and com. to be deducted.	Net loss.
	Brought forward	16,551 74	49,232 22	7,059 47	25,621 01
40	J. Atkins & Co. Adrain & Story	292 35	551 14	50 31	208 48
39	R. Colgate & Co. J. Y. Hallock & Co	889 79	2,050 00	197 00	963 21
44	John D. Gibson, &c. U. S. naval storekeeper	3,436 86	5,557 92	863 33	1,257 73
46	J. Woolfe. Jos. Genella	155 29	493 00	116 34	221 37
51	Aug. Embury. Annan, Talmage & Co.	1,775 85	3,204 55	598 47	830 23
58	J. Giraud & Co. J. M. Pomares & Co	126 25	326 25	41 49	158 51
54	W. H. Westervelt. J. D. Wing	277 60	496 50	103 57	115 33
55	O. W. Pollitz & Co. Crosby & Dibblee	597 73	999 50	207 47	194 30
56 & 59	Irving & Clark. G. O. Whitney & Co	485 44	655 66	179 57	.....
586 62	Annan, Talmage & Co. Bernard, Eger & Co	59 48	112 50	24 34	28 68
67	Carr, Burnett & Oldner. Annan, Talmage & Co	418 66	1,084 50	106 29	559 55
68	James Patrick. James Patrick & Co	326 27	1,100 00	118 00	655 73
69,70,71, & 72	Do Do.	4,900 36	15,226 77	1,320 70	9,005 71
90	Annan, Talmage & Co. Annan, Talmage & Co	806 14	2,250 00	658 60	785 26

84	Ditto. Ditto.	603 36	1,821 12	240 62	977 13	
85	Ditto. Ditto.	389 32	3,228 00	338 99	2,499 69	
88	Ditto. Ditto.	2,465 78	4,190 55	649 47	1,075 30	
89	Ditto. Ditto.	374 21	1,250 00	91 17	784 62	
91	Ditto. Ditto.	2,206 61	7,917 60	1,021 26	4,689 73	
99	H. F. Cutter & Co. H. F. Cutter & Co	162 11	260 00	20 61	77 28	
587 98	Wells & Provost. D. R. Provost	718 12	2,196 00	173 33	1,304 55	
97	Annan, Talmage & Co. Annan, Talmage & Co	41 51	102 75	31 60	29 64	
100	J. J. Reimar. Henry Dopmann	152 78	131 80	16 14	----------	
	Annan, Talmage & Co. Annan, Talmage & Co. Coals	1,038 36	3,053 09	3,670 40		
		39,251 97	107,491 42	17,898 54	52,043 04	

FREIGHT

On the foregoing, not earned, viz:

5 & 6	Annan Talmage & Co	696 06				
9	Park & White	27 43				
14	Annan, Talmage & Co	31 06				
16 & 17	do	90 35				
19 & 31	D. H. Burke	179 16				
20	Annan, Talmage & Co	735 25				
	Forward	1,759 31	39,251 97	107,491 42	17,898 54	52,043 04

Loss sustained by sale of goods at Montevideo to defray expenses.—Continued.

Number of manifest.	Shippers and consignees.		Net proceeds in Montevideo.	Value in San Francisco.	Freight and com. to be deducted.	Net loss.
	Brought forward	1,759 31	39,251 97	107,491 42	17,898 54	52,043 04
	Freight, &c.—Continued.					
	21 Adrain & Story	104 13				
	24 Jones & Stevens	112 46				
	25 U. S. naval storekeeper	2,515 13				
	26 J. Y. Hallock & Co	21 00				
	27 M. Weissberger	38 72				
	32 Annan, Talmage & Co	24 81				
588	38 Moore & Folger	22 32				
	39 J. Y. Hallock & Co	94 50				
	41 Adrain & Story	22 76				
	44 U. S. naval storekeeper	585 44				
	46 Jos. Genella	91 69				
	51 Annan, Talmage & Co	438 25				
	54 J. D. Wing	78 75				
	55 Crosby & Dibblee	157 50				
	58 J. W. Pomares & Co	25 18				
	56 & 59 G. O. Whitney & Co	146 79				
	62 Annan, Talmage & Co	18 74				
	67 do.	52 07				
	90 do.	546 10				
	84 do.	149 57				
	85 do.	177 59				
	88 do.	439 95				
	89 do.	28 67				
	91 do.	625 38				
	97 do.	26 46				
	92 do.	3,517 75				
	68 James Patrick & Co	63 00				

69	do.	383 64				
70	do.	158 81				
71	do.	9 77				
72	do.	4 15				
100	H. Dopmann	9 55				
99	H. F. Cutter & Co	7 61				
98	D. R. Provost	63 53				
						12,524 08
			39,251 97	107,491 42	17,898 54	64,567 12

589 SCHEDULE B.

Expenses at San Francisco, including wages and provisions.

Bills.	General average.	Owners..
WAGES AND PROVISIONS.		
The vessel, as by her protest, bore away April 14th, and sailed Sept'r 10th, making her period of deviation 4 mos., 26 days.		
For master ..... 125 Mate ..... 55 Second mate ..... 30 14 men, a $15 ..... 210 4 do 12 ..... 48 5 boys, 8 ..... 40 Cook ..... 20 Steward 20		
4 mos., 26 days, a ..... $548 per mo.	2,666 93	.....
PROVISIONS		
Master, a ..... $2 00 2 mates, a 1 50 ..... 3 00 25 men, a 50 ..... 12 50		
148 days, a ..... 17 50 per diem.	2,590 00	.....
SACRIFICES.		
For material belonging to the vessel and used in manner below designated:		
Difference in w'g't of anchor slipped ..... 3,500 Do do bought 2,500		
lbs. 1,000, a 8c.	80 00	.....
590 15 fms. chain, 1¾ in., slipped, 2,415, a 6c ..... 144 90 Less ½d for new 48 30	96 60	48 30
1 new hawser cut, chafed, and made worthless by constantly hauling the hulks daily alongside, 90 fms., 9 in. manilla, 1,438, a 14c	208 51	.....
1 bolt of canvas for sides of vessel while discharging the coals	16 00	.....
1 coil manilla (3¼ in.) rope, used for a warp, and totally destroyed	40 60	.....
CLAIMS		
For injuries sustained by a portion of the cargo by the frequent handling incident to the discharge, as per affidavits and certificates:		
Joseph Genella: Breakage upon crockery	134 00	.....
Forward	5,832 64	48 30

Expenses at San Francisco, including wages and provisions.—Contin'd.

Bills.			General average.	Owners.
Brought forward			5,832 64	48 30
Bragg, Rollinson & Co.:				
Breakage upon pipes			50 47	----------
Henry Dopmann:				
Breakage of pipes			165 82	----------
Annan, Talmage & Co.:				
Deterioration by breakage on wooden ware			133 15	----------
Do				
Breakage on glassware, invoice 96			676 79	----------
Do do 28 & 72			473 67	----------
591 W. C. Dyer:				
For cooperage on cargo rough handled			145 80	----------
SHORT DELIVERIES.				
The coal, by discharge into hulks and reloading, was much broken and pulverized, and a portion so mixed with dirt as to be thrown away as worthless:				
C. H. Coffin:				
15 830-2240 tons coal, a 16 75		257 47		
Freight	225 94			
Commission	12 87			
		238 81		
			18 66	----------
PILFERING AND RIFLING OF PACKAGES.				
Chiefly comestibles and apparel, while the cargo was stored in Montevideo or in course of shipment, viz:				
Annan, Talmage & Co.:				
5 boxes soap, to fill up, 100, a 7½		7 50		
Freight	75			
Commission	37			
		1 12		
			6 38	----------
R. E. Brewster & Co.:				
8 boxes soap, to fill up, 160, a 7c		11 20		
Freight	1 05			
Commission	55			
		1 60		
			9 60	----------
592 Park & White:				
2 boxes bitters to fill up		16 00		
Freight	1 30			
Com'n	80			
		2 10		
			13 90	----------
J. Y. Hallock & Co.:				
3 boxes soap to fill up, 60, a 8c		4 80		
Freight	30			
Com'n	24			
		54		
			4 26	----------
Forward			7,531 14	48 30

Expenses at San Francisco, including wages and provisions. – Contin'd.

	Bills.			General average.	Owners.
	Brought forward			7,531 14	48 30
	Conroy & O'Connor:				
	2 doz. silver shaft-tips	8 33			
	1 blank book	1 50			
	6 vols. books	13 72			
			23 55		
	Freight	1 00			
	Com'n	1 17			
			2 17		
				21 38	
	U. S. naval storekeeper:				
	64 paris shoes, a 1 87	114 38			
	23 do 1 75	40 25			
			154 63		
	Freight	2 00			
	Com'n	7 72			
			9 72		
				144 91	
	C. & A. J. Langley:				
	1 10-12 doz. cordial		33 43		
	Freight	1 00			
	Com'n	1 70			
			2 67		
				30 76	
	Edwin Booth:				
	65 hats		34 08		
	Freight	2 35			
	Com'n	1 70			
			4 05		
				30 03	
593	Ulmer, Feigenbaum & Co.:				
	16 pair pants and 3 vests		35 38		
	Freight		1 00		
	Com'n.		1 77		
			2 77		
				32 61	
	J. R. Newton and Co.:				
	Tobacco abstracted (various kinds)		26 75		
	Freight		1 00		
	Com'n		1 33		
			2 33		
				24 42	
	Annan, Talmage & Co.:				
	5 boxes soap to fill up 100, a 7½		7 50		
	Freight		1 00		
	Com'n		37		
			37		
				6 13	
	D. R. Provost.:				
	2 5-12 doz. syrup, a 4	9 67			
	1 2-12 " apples, 7	8 17			
	2 4-12 " pie fruits, 8	18 66			
	4-12 " pepper, 1¼	42			
		36 92			
	Forward			7,821 38	48 30

Expenses at San Francisco, including wages and provisions.—Contin'd.

	Bills			General average.	Owners.
	Brought forward			7,821 38	48 30
	D. R. Provost.—Continued	36 92			
2	doz. sauce, 1	2 00			
2 3-12	" lemonade, 4	9 00			
11 1-12	" peaches, 4 50	51 75			
2-12	" apples, 3	50			
2	" tomatoes, 1¼	2 50			
1 4-12	" gherkins, 3 25	5 00			
1 1-12	" do 2 37	2 57			
			$110 24		
	Freight	7 00			
	Com'n.	5 51			
			12 51		
				97 73	
594	H. F. Cutter & Co.:				
	6 cases peaches to fill up	26 00			
2	" pie fruit to fill up,	8 50			
			$34 50		
	Freight 2 10				
	Com'n. 1 73	3 83			
				30 67	
	Freight upon the articles abstracted, as in the foregoing, viz.				
	Annan, Talmage & Co., $4		75		
	R. E. Rrewster & Co., 7		1 05		
	Park & White, 9		1 30		
	J. Y. Hallock & Co., 26		30		
	Conroy & O'Connor, 36 & 37		1 00		
	U. S. naval storekeeper, 41		2 00		
	C. & A. J. Langley, 43		1 00		
	E. Booth, 53		2 35		
	Ulmer, Feigenbaum & Co., 82		1 00		
	J. R. Newton & Co., 83		1 00		
	Annan, Talmage & Co., 95		1 00		
	D. R. Provost, 98		7 00		
	H. F. Cutter, & Co., 99		2 10		
	C. H. Coffin, coal short, 3		225 94		
				247 79	
	A. H. Clark:				
	For services as clerk assisting in taking account of cargo put into store			60 00	
595	H. W Starr:				
	For 20 days, at $10 per diem, as clerk discharging cargo, charged to owner, as the same service is customary and necessary to all vessels, even when the goods are not warehoused.				210 00
	ADVERTIZING.				
	Notice of warehousing, appraisement, &c, " Bulletin"			20 00	
	" " "Alta"			10 00	
	" " "Chronicle"			23 00	
	" " "Alta"			5 00	
	" of completion of the average and delivery of certificates, to be inserted in 3 papers			15 00	
	Forward			8,330 57	258 30

Expenses at San Francisco, including wages and provisions.—Contin'd.

Bills	General average.	Owners.
Brought forward	8,330 57	258 30
Stationery:		
Books, &c., for warehouse and appraisement	15 00	
Joseph T. Hamm:		
For 68 days' service, as clerk, engaged at the warehouse in assisting the appraisers in opening and examining the cargo and recording value of property when appraised, a $10 p. diem	680 00	
Flint's warehouse:		
For one month's storage on 22 crates crokcery	25 00	
596 Ira P. Rankin & Chas. Hosmer:		
For opening and examining goods, appraising the sound and damaged values, ascertaining the market value of goods sold in Montevideo to raise funds, ascertaining deficiencies, and reporting upon claims, extending over a period of two months	1,000 00	
Flint, Peabody & Co's warehouse:		
For storage of 810 tons cargo warehoused for examination and appraisement, 2 months, a $1 per mo	1,620 00	
W. S. Drayman:		
For cartage of 22 crates crockery to bonded W. H.	22 00	
R. T. Reynolds:		
For drayage and wharfage of 810 tons goods from the dock to warehouses, a $1	810 00	
James L. Tracy:		
For labor in receiving and opening, assorting and over-hauling cargo while under examination and discharge 69 days a $4 p. man, as variously employed	552 00	
597 James Doyle, Barber & Boyd:		
For professional services in instituting suit for possession of certain goods	50 00	
The Liverpool & London Fire Ins. Co.:		
For premium of insurance upon goods stored in warehouse during appraisement, 75,000, for 60 days, a ⅝ per c	468 75	
Geo. T. Knox.:		
For notarial services preparing affidavits, viz.: Annan, Talmage & Co., claim for breakage	5 00	
Jos. Genella, do.	5 00	
Bernard, Eger & Co. do.	5 00	
J. P. Rankin, appraisement	5 00	
Chas. Hosmer, do.	5 00	
Average bond:		
For drawing bond and obtaining signatures to the same	35 00	
Adjuster:		
For translation of bills; examining, stating, and apportioning general average and particular loss; aiding in the appraisement; professional services in examining and rejecting numerous claims, and settling others; and general services from December 7th to March 10th	1,763 14	100 00
three copies of this statement	150 00	
598 COMMISSIONS.		
Annan, Talmage & Co.:		
or collecting and paying general average, per rule of chamber of commerce, 5 per c., on $53,335 93	2,666 79	
	18,213 25	358 30

599

SCHEDULE D.

Value of interests in San Francisco.

Number of manifest.	Consignees—shippers.	Net contributing value.
	VESSEL.	
	In her net valuation (deducting repairs)	33,440 00
	FREIGHT.	
	One half of the amount earned	18,562 82
	CARGO.	
	As per following interests:	
21	Adrain & Story.	
	J. H. Atkins & Co	204 62
76	Do.	
	E. W. Paige	92 77
40	Do.	
	J. H. Atkins & Co	1,027 48
3	Annan, Talmage & Co.	
	N. Dougherty	84 22
4	Do.	
	Annan, Talmage & Co	1,609 06
5	Do.	
	Do	846 57
14	Do.	
	Do	1,630 64
600 16 & 17	Do.	
	Do	2,949 65
20	Do.	
	Do	7,925 90
32	Do.	
	Do	1,162 69
51	Do.	
	Aug. Embury	2,606 08
67	Do.	
	Carr, Burnett & Oldner	978 21
84	Do.	
	Annan, Talmage & Co	1,580 49
85	Do.	
	Do	2,889 01
86, 87, 95	Do.	
	Do	994 56
89	Do.	
	Do	1,158 83
90	Do.	
	Do	1,591 40
91	Do.	
	Do	6,896 34
601 93	Do.	
	Do (wood)	----------
88	Do.	
	Do	3,541 08
96	Do.	
	Do	1,991 18
97	Do.	
	Do	1,414 43
	Forward	95,178 03

Value of interests in San Francisco.—Continued.

Number of manifest.	Consignees—shippers.	Net contributing value.
	Brought forward	95,178 03
7	Brewster & Co., R. E. J. H. Fay & Co	719 25
15	Baker, Frank. Albro & Hoyt	3,683 06
45	Do. C. Constant	437 65
52	Do. M. A. Howell & Co	1,083 26
19 & 31	Burke, D. H. W. Woolfe	2,563 96
27	Bond & Hale. M. Weissberger	446 78
30	Brown, S. R. J. Murphy	86 66
47	Bithel, J. Leavitt, Trow & Co	1,381 36
53	Booth, E. Geo. Booth & Sons	175 92
62	Bernard, Eger & Co. Annan, Talmage & Co	1,565 45
63	Do. Do	614 24
77	Do. Do	250 18
78	Do. Do	563 25
81	Do. Do	672 90
12	Clarke, J. W. C. Rockwell	210 01
36 & 37	Conroy & O'Connor. Conroy & O'Connor	4,927 94
64	Bragg, Rolinson & Co. E. S. Innis	293 25
74	Carson, W. M. K. R. Sinclair & Co	471 98
55	Crosby & Dibblee A. W. Pollitz & Co	792 02
94	Do. D. Barker	218 60
99	Cutter, H. F., & Co. H. F. Cutter & Co	638 06
100	Dopmann, H. J. J. Reimer	663 56
66	Eells & Co., R. S. R. & A. W. Ball	545 10
2	Flint, Peabody & Co. C. H. Coffin	70 43
22	Fitzgerald & Co. W. A Roberts	380 01
73	Frank, E. E. Frank	167 32
46	Genella, J. J. Woolfe	1,480 79
1	Howes, Geo., & Co. Geo. Howes	173 98
	Forward	120,455 00

Value of interests in San Francisco.—Continued.

Number of manifest.	Consignees—shippers.	Net contributing value.
	Brought forward	120,455 00
29	Hoag, J. N. & B. H.	
	Dow & Fowler	7,483 24
602 26	Hallock & Co., J. Y.	
	W. Colgate & Co	1,300 30
39	Hallock & Co., J. Y.	
	R. Colgate & Co	1,853 00
50	Do.	
	J. H. Eckley	167 18
60	Do.	
	C. H. Hallock	483 23
42	Hudson, H. C.	
	Haviland, Harrold & Risley	171 09
11	Jennings & Brewster	
	A. Jennings	203 73
24	Jones & Stevens.	
	Wilson, Fairbanks & Co	953 40
79	Jenny, J. T.	
	J. T. Jenny	308 84
61	Kewin & Gallagher.	
	D. W. Colgan	741 26
43	Langley, C. & A. J.	
	C. H. Ring	683 53
18	Mercantile Library Co.	
	C. B. Norton	63 35
C03 38	Moore & Folger.	
	Manning & Squier	870 00
75	Moigneau, L.	
	Schiefflin, Bros. & Co	675 44
23	Nelson, A. T.	
	Allen, Lowe & Roberts	228 89
83	Newton & Co., J. R.	
	A. Goodwin & Bro	740 40
101	Do.	
	Do	154 62
9	Park & White.	
	Hostetter & Smith	347 84
58	Pomares & Co., J. M.	
	Giraud & Co	293 07
68	Patrick & Co, J.	
	J. Patrick	2,455 00
69	Do.	
	Do	6,627 00
70	Do.	
	Do	6,732 49
71	Do.	
	Do	930 47
604 72	James Patrick & Co.	
	James Patrick	162 70
98	Provost, D. R.	
	Wells & Provost	4,510 74
10	Rice & Coffin.	
	G. W. Westbrook	159 98
54	Rosenfeld, E. & J.	
	J. H. Bergman & Co	82 14
8	Updegraff, C. H.	
	J. Brewster & Sons	1,012 94
	Forward	160,850 87

Value of interests in San Francisco.—Continued.

Number of manifest.	Consignees—shipperr.	Net contributing value.
605	Brought forward	160,850 87
25 & 44	U. S. naval storekeeper. J. D. Gibson	48,486 75
41	Do. D. E. Delevan	11,604 00
82	Ulmer, Feigenbaum & Co. Ulmer, Feigenbaum & Co.	5,986 31
28	Van Vleet, E. J. S. S. Rapplye & Co	534 76
13	Webb & Co. C. Rockwell	407 19
34	Wines & Co., G. H. W. Hall & Sons	466 92
33	Wines & Co., Geo. H. W. Wall & Sons	449 48
35	Wells, Fargo & Co. J. Van Ness	550 12
49	Wilson & Sons. Jno. Wilson	368 27
54	Wing, J. D. W. H. Westervelt	392 93
56 & 59	Whitney & Co., Geo. O. Irving & Clark	1,510 03
		231,607 63

Endorsed:

"Filed (in District Court) February 4th, 1859. W. H. Chevers, clerk."

"Exhibit 'A,' Circuit Court. Filed December 12th, A. D. 1860. Cutter McAllister, clerk."

"Filed May 12th, 1866. Geo. C. Gorham, clerk, by S. Neal, D. C."

Mr. Justice Clifford
Opinion Courage

Supreme Court of the United States.

No 63

SHIP STAR OF HOPE,
HENRY PEARSONS, CLAIMANT,
APPELLANT.
VS.
W. C. ANNAN, ET AL.,
RESPONDENTS.

SAME,
VS.
J. PATRICK, ET AL.,
RESPONDENTS.

SAME,
VS.
JESSE SAWYER,
RESPONDENT.

SAME,
VS.
J. M. EMBURY, ET AL.,
RESPONDENTS.

Appeal in Admiralty.

BRIEF AND POINTS OF APPELLANT.

APPEAL IN ADMIRALTY FROM CIRCUIT COURT FOR CALIFORNIA.

This appeal is:

From so much of a decree of the circuit court, rendered on appeal from the district court, in several consolidated libels,

as awards to the libellants in the four libels above entitled respectively, Annan *et al.*, $26,469 and costs; J. Patrick & Co. $10,691 38, and costs; Jesse Sawyer, $13,614 54, and costs; and J. W. Embury *et al.*, $10,719 29, and costs: being the only amounts embraced in said decree which are appealable to this court.

STATEMENT OF THE CASE.

On various days, from March 21, 1857, to April 22, 1857, sixteen libels, including the four above entitled, were filed in the district court in admiralty against the ship "Star of Hope," then in the port of San Francisco.

The libels, except the last, are in the same form, and are for the non-delivery at San Francisco, by the ship, of certain quantities of merchandize shipped upon her at New York, to be delivered at the former port to the several libellants respectively, but which were sold in the course of the voyage by the master at Montevideo, to pay for repairs at that port made necessary by the stranding of the ship at the Bay of San Antonio.

The answers to all these libels sets up substantially that the stranding at the Bay of San Antonio took place under circumstances which made the damage, and all expenses consequent thereon, a subject of general average contribution by the ship, freight, and cargo.

For these libels, see the transcript on appeal, pp. 23, 24, 48; and for the answer, see pp. 59 to 67.

The other libel, which is that of Embury *et al.*, the fourth above mentioned, (transcript, pp. 68 to 71,) is for $10,115 68 cents, the alleged amount paid by the libellants as the consignees of the ship at San Francisco, as the expenses of an average adjustment, made or attempted to be made by them at that port after her arrival, and of an attempted collection of the same.

The claimant in his answer to this libel, (transcript, pp. 73 to 78,) demurs, on the ground that the matters alleged do not constitute a cause of contract within the admiralty jurisdic-

tion. He then proceeds to deny the principal allegations of the libel, and sets up that the adjustment in question was made by the libellants, on their own account, as the assignees of the charterers of the ship, (Wm. C. Annan & Co.,) and not on account of the ship or her owners, and was defective, erroneous, and worthless: that at all events the cost of the adjustment should come into the general average, and the ship be liable only for her share in the contribution. That the libellants, having, as charterers and consignees of the ship, delivered the cargo to the several consignees thereof without collecting the average thereon, should bear the loss. That the average actually collected by them, amounting to $, and the sum of $30,000 balance remaining unpaid on the charter of the ship, should be set-off.

A statement of the facts in the whole case (including all the libels,) was agreed on by the parties. It embraces, also, several important stipulations. (Transcript, p. 94, fol. 221, to p. 99, fol. 233.)

On November 5, 1858, in the district court, an order was entered by consent, (transcript, pp. 92, 93,) referring the whole case to William H. Chevers, Esq., as a commissioner to report an adjustment upon the basis contended for by the claimant, namely: that the loss and expenses caused by the stranding of the ship were general average. Upon the coming in of the report, (transcript, pp. 100, 101,) exceptions were filed by both parties. (Transcript, pp. 247, 251.) By the libellants, on the ground mainly that the loss and expenses were not general average; by the claimant, upon grounds affecting certain details of the report; which will be considered hereafter in this Brief.

Upon these exceptions and the agreed statement, the case was argued before his honor Judge Hoffman, in the district court, by whom a decision was rendered declaring the damage caused by the stranding of the ship at the Bay of San Antonio, and the loss and expenses consequent thereon, (including the cost of the repairs at Montevideo,) to be a subject of particular average, and not of general average, as contended on behalf of the ship; and holding her liable, as claimed by the

libellants. He also held the ship liable under the fourth libel (Embury *et al.*,) for the expenses of the adjustment made by the consignees.

In conformity with this decision, one decree in all the libels was entered, August 18, 1860. (Transcript, p. 108.)

From this decree an appeal to the circuit court in admiralty was taken for the ship. The cause was argued and submitted there upon the agreed statement of facts in the court below, no further evidence having been produced by any of the parties; and the circuit court affirmed the decree.

Subsequently, and before the appeal to this court, it was discovered, pending a motion for execution in behalf of Brett *et al.*, assignees of the amounts decreed on the first and last of the above-entitled libels, that a serious error had been committed in the amount inserted in the decree upon the first libel, $26,469. By the agreed statement (transcript, fols. 230, 231) it was provided, that from any sum found due to the libellants, Annan *et al.*, in that libel, should be deducted $26,177 80, the balance due by them as the charterers of the ship, (transcript, p. 98, fo. 231,) and the decree entered for the difference. But a small portion of this balance was in fact deducted, so that the decree, instead of being for $26,469, should have been but for $4,291 13. (See affidavit of Cazneau, adjuster, transcript, p. 161, fols. 364, 365.)

On behalf of the ship a motion was made to correct this error of figures. The proof was complete and conclusive on the affidavits of Cazneau, the most eminent adjuster in San Francisco, and others, and upon the full schedules and adjustment reported by the referee, an important part of which had to be replaced on the record by order of the court, having unaccountably disappeared. No serious contest as to these proofs, or the alleged mistake, was made. The court, however, refused to correct the decree, on the ground of the great lapse of time since the entry of the decree in the district court, and because the alleged error, if it existed, might be corrected on appeal in this court. (Transcript, p. 181, fols. 413, 414.) It appeared also that another large sum, about $14,000, which should have been deducted from the same judgment for

averages received by the same libellants, was never deducted. (Transcript, fols. 231, 355, 356, 365.)

The appeal to this court is on these grounds:

1. That the damage to the ship, caused by her stranding at the Bay of San Antonio, and the loss and expense consequent thereon, were a subject of general average, and not of particular average, as decided by the court below.

2. That even if this be not so, and they were a subject of particular average, then the exceptions to the commissioner's report should have been sustained.

And 3. The error of figures in entering the decree in favor of Annan *et al.* should be corrected, by reducing the same to $4,291 13, according to the deductions provided by the agreed statement of facts.

POINTS AND ARGUMENT.

The argument naturally divides itself into three parts: 1. Upon the main question, as to the character of the average, general or particular. 2. Upon the exceptions to the details of the commissioner's report; and, 3. The mistake of figures in entering the decree.

PART FIRST.

The question involved in this part of the argument is this:

"Did the stranding of the ship 'Star of Hope' at the Bay of San Antonio take place under such circumstances as to render the damage and loss consequent thereon a subject of general average contribution?"

The facts particularly bearing upon the present question are described in the agreed statement as follows:

"*The ship also received on board, by consent of the charterers and on freight, payable to them, for and on account of the owners,* 244½ *tons of coal, of the value specified in said schedule. Among the merchandise shipped by the charterers and the other shippers,* (*not the owners,*) *were about five hundred casks and*

packages of brandy and other spirituous liquors stowed next to the coal, and one barrel and forty-eight kegs of gunpowder prepared as "patent safety fuses."

"With this cargo on board, the ship sailed from New York, February 10, 1856, *for the port of San Francisco, being then and during her entire voyage under the command of A. Somerby as master, and being in all respects as agreed in article first of the charter-party, except as hereinafter set forth.*

"During the voyage, on April 14, 1856, *the ship being then about latitude* 46° *S., longitude* 53° *W., the weather squally and the sea rough, great quantities of smoke and vapor were observed issuing from the fore and after hatches. After as full an examination as was possible between decks and otherwise, all on board had every reason to believe the ship on fire below, originating, as was supposed, in the coal, by spontaneous combustion. The hatches were immediately fastened down and everything made tight, in order to check as much as possible the progress of the fire, at least until a port of succor could be reached. It was known that among the cargo were large quantities of spirituous liquors and of the prepared gunpowder already described; all which were believed by every one on board to be highly inflammable and explosive. Great alarm was felt in consequence, and the destruction of the ship, officers, and crew was apprehended by all.*

"The crew refused to continue the voyage, and the captain determined properly to make for the Bay of San Antonio, on the southeast coast of Patagonia, as the nearest anchorage. In about four days, during which the signs of fire continued to increase, she arrived off that bay, and set the usual signal for a pilot. In making ready the anchors and getting up the chains from below, these were found quite hot, and there were other signs of fire which greatly heightened the general alarm. Meantime the weather was such, the wind blowing the ship right on shore, with a heavy sea running, that she could not haul off. The shore being very rocky and precipitous, she could not have gone on there without certain and almost instant loss of vessel, cargo, and all on board. The captain, being very unwilling to run into a bay unknown to him without a pilot, waited about three hours for one, but none came. The place it was evident was a wild and desolate bay, without sign of human life.

"All this time the indications of fire below as well as the weather continued to grow worse. At length he determined, as the best thing to be done for the general safety, and especially for the preservation of the cargo and lives of those on board, to make the attempt to run in without a pilot, preferring all risks

to be thereby incurred rather than to remain outside in the momentary apprehension of destruction to all.

"*Under all the circumstances the captain was fully justified in this.*

"*In attempting to enter the bay the lead was kept going, showing successively* 8, 7, 6, 5, 4½, *and* 4 *fathoms; and immediately afterwards the ship grounded, and, after striking heavily, remained fast. The reef or bank on which she grounded was not visible at the time, and the captain was not aware of its existence; though her stranding was one of the chief risks he had assumed in undertaking to run in.*" (Transcript, fols. 223 to 226.)

The law of general average as it exists to-day in the United States is founded on the Rhodian law, which is thus stated in the Digest (*de lege Rhodiâ de Jactu, l.* 14, *t.* 2, *c.* 1:) "*Lege Rhodiâ cavetur, ut si levandæ navis gratiâ jactus mercium factus est, omnium contributione sarciatur quod pro omnibus datum est.*"

The single case of a jettison is put, obviously as the most common illustration of the general principle. For, as Judge Story remarks, (13 Peters, 338,) the same Digest applies the same rule to the case of a ransom paid to pirates for the ship, (L., 14, T. 2, C. 2, § 3;) and to the case of cutting away or casting overboard the masts or other tackle in a stress of weather. (*Ib.*, T. 2, C. 3; C. 5, § 1.)

Also (he might have added) to the further case of goods put out of a ship into lighters to relieve her, and afterwards lost. (*Ib.*, T. 2, C. 4.)

The fundamental principle is, that "All shall contribute to make good whatever is given up for the good of all."

Out of this single, but pregnant sentence, the whole law of average has grown up by a process of just, wise, and rational development, perhaps unequalled in the history of jurisprudence.

The codes, written and unwritten, of the continenal European States, have, in the main, followed out the general principle with a more just, and at the same time more liberal logic, than the law of England; so far as that law can be gleaned from the conflicting and sometimes incongruous decisions of her courts, and expressions of her text writers. The common

law of that country having early snatched the jurisdiction from the admiralty, so cramped and pinched and starved the doctrine of general average, as finally to have reduced it almost to a *caput mortuum*.

At first, in American law, the great deference of our State courts to English authority led some of them to follow it too closely on this subject; and that influence is still discernible in a few of our State decisions and of our American text writers.

The federal courts have, however, in a series of cases, quite remarkable for their thorough discussion of the subject by the bench and the bar, effectually corrected this tendency, and have undoubtedly restored the American law of average to the original principles and their just scope. Upon them, and on a few cases in the State courts of approved accuracy, the counsel for the ship will rely in this argument, as establishing, not less by their whole reasoning than by what they expressly decide, principles and analogies which, with others universally acknowledged, are, it is believed by him, conclusive in his favor.

The conditions which must concur to stamp on a maritime loss the character of a general average, have been variously stated by courts and writers, according to their cases and theories, and with greater or less exactness. But for the purposes of the present case, it may be safely said the following conditions must exist:

1. The danger must be imminent, and common to the ship, cargo, and the lives of those on board.

2. To avert this danger from the whole, the ship or cargo, either entirely or in part, must be purposely put at risk in lieu of the whole.

3. By the loss incurred, the safety of the other interests involved must, at least for the time, be accomplished. (See Laws of Wisbuy, 20, 1 Pet. Adm. Dec., App., xxiv, xxv.; authorities cited 2 Arnould, 883, note *h;* Col. Insurance Company *v.* Ashby, 13 Pet., 338; Barnard *v.* Adams, 10 Howard, 303.)

In this case it cannot be seriously disputed that the *first* and *last* of these essential conditions, or their full equivalents, existed. The agreed statement of facts is explicit that all on board had "every reason" to believe the ship, cargo, and their own lives in the most imminent peril; and that the captain was "fully justified" in acting on this belief. As to the danger and its character, there can be no question. Nor can there be any that by the steps taken the danger, if it existed, was averted. If it did not exist, still there was "every reason" to suppose it did; which, for the purpose of the law, is the same thing.

The only controversy is, whether or no the *second* essential condition is found in this case. In other words, whether, to avert the danger impending over the whole, the ship was purposely put at risk in lieu of the whole, so as to make the damage afterwards incurred by her (and, of course, the consequent expenses) matter of general average contribution.

The circumstances under which she was stranded are settled by the agreed statement of facts.

The question is, therefore, as to the legal effect of those facts. The decision below was that the effect of them is to establish a case of particular average; in other words, to render the ship alone liable for the damage done by the stranding. Appellant's counsel, on the contrary, contends they make out a case for a general average and contribution by the different interests involved.

He submits to the court the two following propositions, as being a just statement of the law which governs this case:

POINTS.

I. Whenever, to avoid an imminent danger, common to the ship, cargo, and the lives of those on board, the ship is voluntarily or purposely exposed to a distinct and extraordinary peril, out of the usual course of navigation, and of the ship's duties as a carrier for the voyage, any loss or damage to the ship consequent thereon is a subject of general average contribution.

II. It is immaterial though this loss or damage to the ship is other or greater than was expected, or whether it was wrought directly and immediately by the act of exposure, or incidentally by reason of the ship being placed in a situation which made her liable to the injury.

These two propositions, being so closely connected that the latter is almost purely a corollary from the former, will be discussed together.

1. The whole law of general average is pre-eminently a series of analogous equities drawn out from an original principle. There being no decided case precisely the same with this in its facts, it will be necessary to deduce the law of this case by the same process, aided by the decisions in analogous cases.

The most obvious general analogy to sustain both propositions is that of goods put into a lighter to relieve the ship and cargo, and afterwards lost or damaged. This is a case of general average as ancient as the Digest, (as already cited,) and so by all the authorities since, without exception. (Emerigon, by Meredith, 474, citing Ord. Mar., 19, *du jet;* Digest, *ante* p. 7, *loc. cit.;* Jacobsen Sea Laws, 349 and note *r;* Guidon, c. 5, § 28; Abbott Shipping, *477; Stev. & Benecke, 65, 133, 249; 2 Phill. Ins., § 1288 and note 2; Lewis *vs.* Williams, 1 Hall, 430.)

So in the highly analogous case of goods lightered out of a ship compelled to take refuge in a port to which she was not destined, and which she cannot enter without being relieved of a part of her cargo. (Abbott, *477, and note *i.*)

This latter case presents pointedly the feature which converts a loss of lightered goods into a general average, namely, that the lightering is out of the usual course of navigation for the voyage. Where it is not so, as when the lightering is in the common course of navigation or business the loss is particular average. The exception is fully recognized (Emerigon, 474; 2 Phill. Ins., §1288, and note 3; Stev. & Ben., 134; Lewis *vs.* Williams, 1 Hall, 437, 438) and confirms the rule, and both clearly establish our two propositions.

2. Manifestly, in all such cases the decisive fact is, that there is a voluntary exposure of the goods to a distinct and extraordinary peril, out of the common course of navigation. The intention in putting the goods into the lighters is not to destroy them. Very generally the expectation is that they will be saved. The loss, howsoever it occurs, is incidental to the exposure, and is general average.

Hence, Mr. Benecke (S. & Ben., 133, 134) very correctly deduces the general rule, that "where goods are exposed intentionally to an extraordinary danger for the benefit of the whole, it is a title to compensation; for to *expose* another's property, or *destroy* it, without compensation, would be equally unjust."

Following out the same principle of an extraordinary exposure, Magens (1 Mag., 160, case IX, quoted S. & Ben., 134, note *a*) mentions the case of goods put out of a leaky ship on board of another, which was afterwards captured, where the goods were contributed for in general average.

3. Besides lightered goods, Emerigon (480 and 481,) mentions the cases of boats launched from a ship for the common safety and afterwards lost, coming into general average. As when a ship chased by hostile cruisers put out a boat with a lantern into the sea at night, by which the enemy was misled, and the ship escaped. So, (*Ib.*) where the Italian sailors in the Mediterranean kept a launch towing, to escape more readily from the Barbary corsairs. This latter case is more particularly within the class of extraordinary exposures, without any especial expectation of loss or sacrifice.

4. The damage to the ship in an engagement for the purpose of defending her against an enemy, and the expenses of curing and maintaining the wounded officers and men of the ship, are a general average. (Laws Hanse T., 35; Ord. Mar. *l.* 3, t. 4, § 11; Code de Comm., § 263; Jacobsen Sea Laws, 349; 2 Phill. Ins., § 1310, and authorities cited; Benecke and S., 154, 155, quoting Valin des Avar. art. 6; Flanders' Mar. Law, §§ 316, 317.)

In Taylor *vs.* Curtis, (6 Taunt., 608,) this clear equity was denied by the English C. B. The legislature, as is not uncommon in that country, has since relieved the harshness of the law maintained by the courts; and, by statutes 11 and 12 William III, c. 7, the ship, freight, and cargo, are liable to a general average, not exceeding two per cent. on their value, to be distributed among the wounded and the widows of the slain. (Benecke and S., 155.)

Upon the same principle, damage purposely done or loss incurred in the effort to escape from an enemy is general average. (2 Phill. Ins., § 1309.)

5. And see the cases of extraordinary exposure or loss, out of the common course, in 2 Phill. Ins., § 1295: slipping the cable to run out to sea to escape going ashore; § 1298, sails let go to right the ship when on her beam-ends, (Ben., 112;) § 1299, applying a portion of the ship's tackle or equipment to an extraordinary use; §§ 1308, 1309, cutting a cable to keep with convoy or escape from an enemy; § 1320, expense of putting into a port out of the course of the voyage, to refit, etc., etc.

In like manner, the general rule as to *expenses* is, that where they are extraordinary, or out of the common course, they are general average. (Emerigon, 467, quoting the Ord.; Stevens & Ben., 61.)

The whole doctrine embraced in Point I is conceded by Mr. Arnould, (2 Ins. *885.) Undoubtedly it furnishes the only certain test of a general average in all cases and under all circumstances.

6. Finally, in support of the same proposition, we find that in the very late case of Dupont *vs.* Vance, (19 How., 162,) the Supreme Court has stated the distinctive features of a general average sacrifice in these words (170):

"If it be made to relieve the adventure from a peril which has fallen on all the subjects engaged in it, the risk of which peril was not assumed by the carrier, the charge is to be borne proportionably by all the interests," &c.

The rule is stated with reference to the facts of that case and the questions raised. But the principle recognized as to risks and perils not within the obligation of the carrier for the voyage involves the doctrine for which we contend.

7. In decreeing against the ship, the district court rests its decision on the proposition that, to make a loss by stranding general average, "the stranding must be the immediate result of the act and volition of man directed toward that particular object." (See printed decision, p. 15.) Or, as elsewhere more succinctly stated, that the stranding must have been "the immediate and direct result of an intention to effect that particular object." (Decision, p. 11.)

In one sense, probably, the injury must be "the direct and immediate result" of the act of man. That is, the injury must have such a connection with the act as naturally to refer itself to the act as to its proximate cause; so that, but for the act, the injury most probably would not have happened. The district judge, however, uses the language in a more restricted sense, as is evident from his rule, that the injury must be "the direct and immediate result of an act intended to produce it," and from the general course of his reasoning and illustrations. It is in this sense I propose to discuss his decision.

8. The doctrine which prevailed below seems to have been that, to entitle a loss to come into general average, it must be not only the direct, but the immediate result of the act and will of man; so that, if the loss be by stranding, stranding must have been the very form of injury premeditated in making the exposure or sacrifice.

9. This doctrine of the learned district judge, as explained and applied by him, appears clearly at war with the first principles of general average; with many of the oldest and most widely acknowledged cases of general average; and with several decisions of recognized authority in the federal courts.

10. In the first place, the vital principle of general aver-

age is the motive of the act of sacrifice or exposure. That motive must be the common safety of the other interests concerned. It is that which gives its character to the act; not the fact that any particular damage was intended, or form of damage or injury "premeditated."

If this were not so, and if the rule laid down by the district court and maintained by the libellants' counsel were the law, the right to a general average would depend on a variety of accidental and irrelevant circumstances: as the state of the tides, which now conceal and now disclose a particular reef or shoal; the direction of the wind at the moment of injury; the accuracy of the master's calculations as to reaching the shore in a case of stranding; the time of day or night; the order in which the ship might happen to encounter the various damages through which she seeks safety for the rest, at whatever hazard to herself. "*Per varios casus, per tot discrimina rerum.*"

11. It is needless, however, to argue from general principles. The whole doctrine is in conflict with the principle and reason of the oldest and clearest cases of general average. Such are: goods put into lighters to relieve the ship; goods lightered to enable the ship to enter a port not her port of destination; goods put out of a leaky ship into another which is afterwards captured, etc. (*Ante*, pp. 17, 18.)

In all these cases the forms of injury are manifold, and beyond all human power beforehand to particularize. Thus, lightered goods may be damaged by water from the sea or the sky, by cold or heat, or by lightning; may be lost by stranding or foundering, or jettison, or by capture. It is, therefore, quite impossible to say how far the damage done the goods is "the direct and immediate result" of the exposure, or is merely a consequence or incident of their being placed in a position which made them peculiarly liable to injury. Or, that the particular form of damage done could have been (in the language of the district court) "the result of an intention to effect that particular object;" in other words, could have been the precise form "premeditated," as insisted by opposite

counsel. That would be to require of every master of a ship, besides being a mariner, to be also a prophet.

12. The doctrine is equally opposed to all the most authoritative cases in the United States.

Caze *vs.* Reilly (3 Wash. C. C. 298) is a case in point in support of both our propositions, the reasoning of which has twice received "the unqualified assent" of the Supreme Court of the United States. (13 Pet., 343; 10 How., 302.) There, the master of a schooner, hard pressed by British cruizers, ran her upon the beach at Long Branch. The enemy, landing in boats, set fire to the vessel and burned her to the water's edge. The hulk floated ashore and was lost. About half of the cargo was saved, part before she was set on fire, and part after the fire was extinguished. Two questions were raised as to the liability of the goods saved to a general average: *First*, for the value of the vessel; and, *Second*, for that of the freight and cargo lost. The first—which, in fact, involves the other—was the only one argued and decided. The court held in favor of the general average for the value of the vessel. The claim to the general average was opposed by an eminent lawyer of that day, Mr. Duponceau, on several grounds, some of which have a striking likeness to those taken against the ship in this case. One of them was, that the loss of the vessel was not contemplated as the consequence of the stranding. (P. 303.) This was so far true, that obviously her destruction was directly owing, not to her stranding, but to her being set on fire by the enemy, which was not "the direct and immediate result" of her stranding, but an incident of it, and of her being placed thereby in a situation which exposed her to that form of injury. Of course, it could not be said to have been premeditated by the master, or "intended" by him, more than any other form of destruction possible to follow his beaching his vessel.

The court, however, utterly repels the objection, and says, (p. 303:)

"The truth is, that it is the motive of the act in relation to the rest of the property, and not the intention of the jettison

in relation to the fate of the thing sacrificed or exposed to danger which gives rise to contribution."

Again, (p. 304:)

"If the exposure of the vessel be made for the common safety and be successful, it is of no consequence whether her total loss was produced immediately by the stranding, or subsequently by placing her in a situation by which her destruction was effected."

Sims *vs.* Gurney, (4 Binney, 513:) A case which, like Caze *vs.* Reilly, has twice received in the strongest manner the approval of the Supreme Court of the United States. (13 Pet., 343; 10 How., 302.) From the violence of the storm in the Delaware bay the ship, in this case, had to go ashore somewhere, and was in danger, if left to herself, of going upon certain flats, where her situation would have been extremely perilous. (P. 515.) The subsequent facts are stated by the court, (p. 525:)

"To prevent that, the course was altered, and they stood for Cape May, the most desirable place to run on shore. The captain wished to get to Cape May, and the pilot said he would try for it, although he did not expect to effect it, but supposed they would stick on a ridge about four miles from the cape. On this ridge the ship struck according to the pilot's expectations. She lost her rudder and labored very hard on the ridge; the mizzen and mainmast were cut away to save her, and at length, contrary to expectation, she beat over and got into deep water between the ridge and the Jersey shore. Being then quite ungovernable, she was at the mercy of the winds and currents, which, most fortunately and unaccountably, brought her on the shore near to Cape May, the object of their wishes. The damage was very considerable, both on the ridge and at the cape, and in the course of the argument the damage at these two places has been the subject of separate consideration."

It was held a case of general average, both as to the damage from striking on the ridge and as to that from stranding on the beach at Cape May.

"Because," says the court, (p. 527,) "the damage at Cape May was the necessary result of running on the ridge. The ship lost her rudder and masts on the ridge, in consequence of which she was driven by the winds and waves on the shore

near the cape. The same reasoning applies to the boats. For it was left to the jury to decide whether the damage done to them was in consequence of running on the ridge." (And see, per Yeates, J., p. 528.)

In that case, the act of exposure was steering the ship to a dangerous shore; though less dangerous than the flats where she must have gone, but for "the will and agency of man." The damage done by the loss of her boats and her stranding on Cape May was not only not "premeditated," nor "the result of an intention to effect that particular object," (as said by Judge Hoffman,) but was "contrary to the expectations" of the ship's officers. (P. 525.) It was, however, a consequence of the original act of exposure, and partook of its character, because it was produced "subsequently, by placing her in a situation" which made her peculiarly liable to damage: namely, running her on the ridge, where she beat till she lost two of her masts and her rudder and became unmanageable. (P. 514.)

Sturgess *vs.* Cary, 2 Curtis C. C., 59, 66, 67: The master slipped his cables and surrendered his vessel to the elements, to be by them swept ashore on the nearest land. The exposure in this case was the slipping of the cables. That having been voluntary, all damage consequent thereon was voluntary also. And in the language of Caze *vs.* Reilly, it was not material whether the loss had been produced directly by the act of exposure or subsequently by the vessel's being thereby placed in a situation in which she was greatly damaged.

Reynolds *vs.* Ocean Insurance Company, 22 Pick., 191: The vessel having struck the bottom, and being in danger of sinking, the master slipped his cable and she went ashore.

See also the same effect Barnard *vs.* Adams, 10 How., 270, (facts of the case, 300, 301,) 299, 307; Gray *vs.* Waln, 2 Serg. and R., 229, a case which has also been approved as to its reasoning by the Supreme Court of the United States, (10 How., 302.)

13. Besides the authorities already cited in support of both propositions, as Caze *vs.* Reilly, and the case of the lightered goods, etc., (*ante*, pp. 10, 11,) there are others which, though

bearing upon the first, apply more particularly in support of the second proposition.

Maggrath *vs.* Church, 1 Caines, 196, 214: A vessel being on her beam ends, and the mast being cut away to right her, it splintered below the partners so as to admit the sea water into the hold. It was held that the cargo thus damaged was entitled to contribution.

So, in Col. Ins. Co. *vs.* Ashby, (13 Pet., 343,) the court presents as clear cases for a general average—

1. Where one mast is cut away, and thereby another mast is unexpectedly and unintentionally carried away with it in its fall; and,

2. Where, in the opening of the hatches and the *jettison* of some goods to lighten the ship "others are unexpectedly and unintentionally, but accidently, injured or destroyed."

In both these cases the damage is not the "necessary consequence" of the act of exposure; nor is the form of the damage necessarily, or even naturally, the form that was contemplated, much less intended, in the act of exposure. (See also, 2 Phill. Ins. § 1286, and note 2.)

The case cited by his honor Judge Hoffman, (Decision, pp. 11–12,) a decree of the French court of Aix, from Rogron Code de Commerce, (art. 403, note,) supported by the authority of Boulay Paty, is in direct conflict with his own rule, and fully supports our doctrine; going further even than our case requires. In that case the ship's anchor and cable had been voluntarily slipped and lost for the general safety, and the master having gone ashore the next day to replace them, the ship, in his absence, was stranded.

Under such circumstances how can it be said that the particular damage was "intended" or "premeditated," or that it was even "the direct and immediate result" of the act of man?

It was simply a result of the ship's being placed in a situation which made her liable to the injury which befell her.

14. The attempt was made below to get rid of the principle and reasoning of certain cases of damage by stranding cited

for the ship, on the ground that in those cases the stranding was not only voluntary, but distinctly premeditated: as in the case of the Brutus (Barnard *vs.* Adams, 10 How, 270;) of the brig Hope, (Col. Insurance Co. *vs.* Ashby, 13 Pet., 331;) Caze *vs.* Reilly, 3 Wash. C. C., 298, etc. In the present case it was said below, that the stranding was not voluntary, at least was not intended and premeditated, but was purely accidental; and hence the principles and reasoning of the cases cited do not apply. The district court adopts the same view. (Decision, pp. 10, 11.)

Conceding for the present the assumption of fact that the stranding was wholly unintended and unforeseen, a view which will be refuted hereafter, this whole argument seems to confound two things entirely different: the act of exposure and the particular form of injury consequent thereon. The former must be voluntary or intentional. The latter need not be; frequently is not; in many well recognized cases cannot be. Usually, in cases of stranding, the act of exposure is the stranding itself. But a case might well be imagined where the act of exposure was generally to whatever dangers might befall, and the stranding, as one of those dangers, would be merely a consequence of the act, or an incident to the situation in which the act had placed the ship. In Caze *vs.* Reilly, the act of exposure was stranding, but the damage was from the burning of the ship thus stranded. In arguing that case who would contend that cases of damage from stranding were not applicable in their principles and reasoning, because the one was a case of damage by burning, and the others were cases of damage by stranding?

15. Such being the law upon principle and the authorities, fully sustaining the two points abeve stated, the next inquiry is, whether the facts of this case bring it within those two points, especially the first of them.

In other words:

Was the stranding of the ship at the Bay of San Antonio such as to make the loss occasioned thereby a subject of general average, within the rule laid down?

That this inquiry must be answered in the affirmative seems sufficiently clear. This court is referred to that portion of the agreed facts particularly bearing upon this point. (*Ante*, pp. 6, 7.)

The master of the ship found himself at the end of his deviation off the Bay of San Antonio, with his vessel laden with combustible and explosive material on fire under him, as he had every reason to believe. Before him was a rocky and precipitous shore, upon which the wind and sea were forcing him, irresistibly, to certain destruction. Through an opening in the shore was the entrance to the bay—a wild and desolate place, without sign of human life. It was an unknown bay; and on that remote coast whatever is unknown is dangerous. Dangerous as it was, it presented the only hope of safety from the impending destruction by fire in his ship on the one hand, and by the wind and sea, which were forcing him upon a rocky shore, on the other hand. The very case was presented for the exercise by him of the "forced will" of a general average risk. He exercised it.

"At length," (is the agreed statement,) "he determined, as the best thing to be done for the general safety, and especially for the preservation of the cargo and lives on board, to make the attempt to run in without a pilot, preferring all risks to be thereby increased rather than to remain outside in the momentary apprehension of destruction to all." * * *

"In attempting to enter the bay the lead was kept going, showing successively eight, seven, six, five, four and a half, and four fathoms; and immediately afterwards the ship grounded, and after striking heavily, remained fast."

How is it possible to deny that here was an exposure, by the master, of his ship, to a distinct and extraordinary peril, purposely made by him, as the only escape from the instant destruction impending over ship, cargo, and crew?

The agreed statement is, that "stranding was one of the chief risks he had assumed in attempting to run in." The other facts show conclusively that he realized this danger fully. They show that with his ship surrounded by the most pressing dangers, so thoroughly did he appreciate the perils of entering, and so reluctant was he to encounter them, that

for three hours he held on outside, waiting for a pilot. A more pregnant fact it would be difficult to imagine. When, at last, he made up his mind to attempt to run in at all hazards, it was not because he overlooked or underrated the perils of the enterprise; but because it offered the only chance of escape from the far greater dangers that surrounded him, and which had become too pressing for further delay; and because, as the agreed statement says, "he preferred all the risks of running in to those of remaining outside." So stern was the necessity, that even though he knew the water was shoaling rapidly under him, the lead showing successively eight, seven, six, five, four and a half, and four fathoms, he dared not desist from the attempt to make his way in. The next moment, as might be expected, the ship grounded, and after striking heavily, remained fast.

In the face of these facts it seems very little to the purpose to urge that the particular reef on which the ship struck was unknown to the master, that he endeavored to get a pilot, or even that he hoped or expected to take her safely in. If the reef on which she struck was unknown to the master, he knew the water was shoaling with dangerous rapidity, and the agreed statement of facts is that "he determined to run in at all risks."

16. Considerable stress has been laid throughout on the point that the master did not intend or wish to strand the ship. This is not alleged in the "statement of facts" in the case, and is merely an inference from the fact that the rock or reef on which the ship struck was not visible, and was unknown to him. It is expressly stated, however, as a fact, that "he determined to run in at all risks," and that the ship's stranding "was one of the chief risks he assumed in undertaking to run in."

In the same view, it has been urged that, on arriving off the bay, the master set the proper signal for a pilot.

All this appears to be on the theory that to constitute a general average loss there must be an intent recklessly to destroy the thing selected for the exposure; a determination to sacrifice

it at all events, without regard to the ordinary means of safety.

A theory somewhat like this was advanced by the court in Walker *vs.* United States Insurance Co., (11 Serg. & R. 61,) but it is an essentially unsound theory; so much so, as to excite surprise that it could ever be adopted by so respectable a court. It is fully reviewed and rejected by the Supreme Court in 10 How., 304, 305, etc.

In truth, the intention to injure the *jactus*, as distinguished from the intention to put it in a situation of exposure out of the usual course, much less to injure it in any particular manner, or by any particular rock or shoal, *cannot* be an element of general average. Otherwise, goods lightered would never be entitled to contribution; because, as to them, (as already remarked,) so far from there being any intention to injure them, the expectation commonly is that they will be saved. (See Caze *vs.* Reilly, 3 Wash., 303, on the point.)

17. So, there is nothing in the fact that the captain tried to get a pilot.

Having determined on the effort to take his ship in, it was his duty to do so, safely, if he could; and the law of general average neither requires nor allows any wanton exposure of property, or reckless disregard of the ordinary precautions. Neither does it object that the master obtains safety for the rest, at the least possible risk to the thing exposed. In Barnard *vs.* Adams, (10 How., 270,) the officer of the ship stranded her in the "least dangerous part" of the shore he could find, (302, 306.) To the same effect, Sims *vs.* Gurney, 4 Binn., 513, 514, 515, 519; Mutual Insurance Company *vs.* Cargo of ship George, Olcott's R., 89, (Betts, J.,) 91, 92; S. P., Col. Insurance Company *vs.* Ashby, 13 Pet., 342; Emerigon, 324, (ch. 12, § 13.)

18. It is sufficient if there is a purpose to subject the *jactus* to a distinct and extraordinary exposure in lieu of the rest. That having been the master's purpose in this case, it is immaterial how far he hoped or endeavored to take his ship

in without serious injury. His purpose and intention were to attempt to take her in at all hazards; and this purpose and intention embraced all the consequences of the attempt. He may have hoped they would not be serious, and may have taken every precaution to that end; and he may not have had beforehand a very definite idea of their precise character. But, whatever they might be, he deliberately exposed his ship to them, When one of them proved to be stranding, that result took its character from the act whence it flowed. That having been voluntary and with a purpose, the stranding was, in the eye of the law, voluntary also. The master's efforts, or even his hopes to take his ship in safely, as they could not control the event, do not affect its character.

This view becomes irresistible when we consider the circumstances which immediately preceded the stranding. The agreed statement is, that as the ship was making her way in, "the lead was kept going, showing, successively, eight, seven, six, five, four and a half, and four fathoms; and immediately afterwards the ship grounded, and, after striking heavily, remained fast."

19. Were it necessary to our case, we might contend that this clearly brings it within even the excessively stringent rule of the district judge. With such soundings, in an "unknown bay," in "a wild and desolate place," any master of a ship must have foreseen stranding as "the immediate and direct result" of his attempt to run in, if continued. In continuing it, he must be presumed to have intended all the consequences of his act, and to have purposely exposed his ship to the stranding which immediately ensued; to have "premeditated" that precise form of injury, according to the rule of libellants' counsel. Whatever the character of the original act of exposure, it must be inferred that the stranding "was the immediate result of the act and volition of man, directed toward that particular result," in the language of the district judge.

19*a*. So, it is argued that it does not seem that the master considered stranding as a desirable or appropriate remedy for

the supposed peril. The force of this does not appear, probably because it does not exist. The loss or injury in a case of general average is rarely the remedy proposed. It is merely the result or the incident of the step taken with a view to a remedy.

20. The only remaining inquiry is—

Was the risk taken in this case out of the usual course of navigation and of the ship's duties as a carrier for the voyage, so as to entitle the loss consequent thereon to come into general average?

That it was, is denied in the decision of the district court, (Decision, pp. 13,14, 15,) on the ground that there is no substantial difference between the risk and damage in this case, and "the losses arising from directing the ship to parts of the seas where the chances of collision are greatly increased, or to high latitudes, where the risks of damage from icebergs are enhanced, or to stormy and inhospitable coasts, where the dangers of shipwreck might be greater than if the regular and usual course of the voyage had been pursued," (p. 13;) for all which losses there is no contribution. And upon the further ground, "that it would be impracticable for the courts to make the determination of the right to contribution depend upon nice discriminations between different degrees of peril, or attempt to decide in each case whether the carrier was not bound by his contract to expose his vessel to the precise degree of risk he encountered." (P. 14.)

The cases supposed by the district judge are not at all parallel with the present. They are all cases of risks incurred by the carrier in and for the regular prosecution of his voyage, or in the course of a necessary deviation from it, but not incurred by him under the immediate pressure of an imminent danger, and with the purpose of exposing his ship to those risks, in lieu of the other interests involved. It may not be practicable to define exactly the dividing line between the two classes of risks. Although, in general terms, the distinction would seem to be between damage caused by a *vis major*, as the fury of the ele-

ments, or by some wholly fortuitous casualty, as by striking an iceberg in the high latitudes in the night; in either case without the will or agency of man: and damage resulting from an exposure of ship or cargo, made with the purpose (though, in a measure, forced) of rescuing the other interests from an overwhelming peril. So the distinction is plain enough between the exposure and injury in the present case, and the exposure made and injury sustained by the ship in carrying such sail, steering such courses, and sailing in such latitudes as the exigencies of the voyage seem to require. The exposure in the one case is not only required of the ship by her duty for the voyage, but would be a violation of it, except for the extraordinary circumstances which compel and justify it.

Such is the exposure when the master cuts away his mast and damages his cargo, or runs his ship into an unknown bay, with the water shoaling rapidly under him, until he strands her.

So here. The place into which the master of the "Star of Hope" was obliged to venture with her, as his only chance of escape, was not his destined or any port, but a wild and desolate bay, far from the paths of commerce and forsaken by man, with a depth of water palpably dangerous and insufficient. The attempt to take her into such a place at all was not only beyond his duty, but could only be justified by circumstances so desperate as to leave no alternative between that and destruction. The same circumstances inspired the motive which gives to the attempt, and to its consequences, the character which we claim for them.

21. The circumstances of the present case illustrate forcibly this important distinction between it and the cases put by the district judge.

If, after the deviation of the ship, while making for a port of refuge, she had encountered an ordinary peril of the seas, or one which, however extraordinary, was casual and wholly unanticipated, and without the choice or agency of man, in neither instance would the loss be general average. In the former instance the loss is one of the ordinary incidents of

navigation; in the latter it lacks the essential element of an exposure made or a risk run by man's agency with a purpose, and that purpose the common safety from a known danger.

But in the moment when the determination to take his ship into an unknown bay, at whatever risk, was acted on by the master, a new exposure of the ship was made, wholly different in its character; an exposure to distinct perils, made with a purpose of rescuing all the interests from a common danger; an exposure, which was the voluntary sacrifice of the ship, so far as the mind and agency of man were concerned, or as respected any consequences that might ensue. (See Lee *vs.* Griswold, 5 Duer, 415, 416.)

This distinction does not seem to be so impracticable for the courts to draw as is supposed by the decision, or as to warrant the conclusions of the district judge. It may be difficult, but not more so than other distinctions that are recognized by the law of general average, in which, as in other branches of the law, the cases are quite numerous which hug the dividing line so closely as to be almost undistinguishable from each other, and to leave it more or less uncertain on which side of it they fall. To reject such distinctions for some broad general rule, might facilitate the functions of courts and counsel, but the advantage would be too dearly purchased at the expense of fundamental principles and the rights of suitors.

II.

In any view, the expenses of the repairs at Montevideo were general average.

The agreed statement of facts is, that the expenses of repairs at Montevideo were "necessary to enable the ship to resume her voyage." (Trans., fol. 226.)

The expenses amounted to $35,359 90. (See footings of schedule A, commissioner's report, trans., p. 272.)

The ship's value at San Francisco, her port of destination, is fixed in the agreed statement of facts, (trans., fol. 229,) at $40,000; and at Montevideo, the port of repairs, also by

agreement, at $33,000. Hence, the actual cost of repairs exceeded one-half of her value when repaired, and there was a constructive total loss. (Patapsco Insurance Co. *vs.* Southgate, 5 Pet., *618, *619, 620; Bradlie *vs.* Maryland Insurance Co., 12 Pet., 398, 399.)

This presents for decision the question, whether all the repairs made in this case, having been "necessary repairs, to enable the ship to resume her voyage," are not general average, without regard to the nature of the original damage. Especially, if considered in connection with the fact that there was in this case a constructive total loss, upon which the master might have abandoned, but did not. In Plummer *vs.* Wildman, (3 Maule and Selw., 482,) it was held by Lord Ellenborough and all the other judges, that "the repairs necessary to enable the ship to resume her voyage" (pp. 487, 487, 488) were general average. And Judge Story says in his note to Abbott Shipping, (601, 602, *498,) that the doctrine of that case has been generally followed in the reasoning of our American courts.

In truth, it is on this principle, if on any, that we must sustain the settled doctrine which brings into general average a large class of expenses, though resulting from purely fortuitous damage or exposure: such as wages and provisions of officers and crew from the moment of deviation for a port of repair until the voyage is resumed, unloading, warehousing, and reloading the cargo at the port of repair, &c. (See *infra*, pp. 30, 31.)

If the repairs are general average, the loss on the sale of goods to pay for them (see *infra* p. 32, §3) was also.

PART SECOND.

Exceptions to the Commissioner's Report.

The decision of the district court was that the damage and loss consequent upon the stranding of the ship "Star of Hope," at Montevideo, was a subject of particular average.

Upon that decision, and assuming it as a basis, the claimant of the ship filed a series of three exceptions to certain details

of the report of the commissioner, which he contended were incorrect, even under the principle laid down by the district court.

These exceptions were all disallowed by the court below, and are at pp. 107, 108, of the transcript.

They will here be argued very briefly.

First Exception.

The substance of this exception is, that the commissioner erred in charging the ship or the freight with any part of the alleged expenses of the pretended adjustment, made or attempted in the port of San Francisco, by Annan, Embury & Hazzard, the successors of the original firm of Annan, Talmadge & Co., the charterers and consignees of the ship.

To the libel filed for these expenses, the claimant put in a full demurrer.

It would seem that this whole question is disposed of by Cutler *v.* Rae, 7 How., 729. (See also Minturn *v.* Maynard, 17 How., 477.)

There is not only no proof that the ship was still in the custody of the libellants, when they filed their libel; but the fact was otherwise, as was admitted in the argument.

Second Exception.

The substance of this exception is, that the commissioner erred in assuming as the basis of his estimate of the contributory value of the ship, her valuation in the policy of insurance at Boston, admitted to be $65,000, (transcript, fol. 241,) from which deducting for repairs at Montevideo, $32,560, (which should have been $35,359 90, *infra*, p. 32,) he arrives at $32,440 as her contributory value in the adjustment. (See Schedule D, of his report, first item, trans., p. 283.)

The true basis of valuation is the value at San Francisco, her port of destination and adjustment, fixed in the agreed statement of facts at $40,000. (*Ante*, p. 26.)

This is the rule which is sustained by the authorities, and is in analogy with the principle by which the contributory value

of the other interests is ascertained. (3 Kent Comm., *242; 2 Parsons' Maritime Law, 420, 430; Clark *v.* U. S. M. Ins. Co., 7 Mass., *365, *370; Welles *v.* Gray, 10 Mass., 41, 45, 46.)

Taking as a basis the agreed value at San Francisco, $40,000, and deducting for repairs $35,359 90, leaves $4,640 10 as the actual contributory value in the adjustment at San Francisco.

Third Exception.

The substance of this exception is, that the commissioner erred in bringing into particular average, or subject to a deduction of "one-third new for old," certain expenses at Montevideo, which, though incidental to the repairs of the ship, were either not themselves a permanent benefit to her, or were not incurred for that purpose. Such as expenses of

1. Surveys, orders, estimates, reports, etc.

2. Preparations for making the repairs; labor in heaving her down; wear and tear of materials used therein; anchors, cordage, blocks, etc.; boat hire, etc.

3. Building staging and use of materials therein, etc.

4. Expenses of raising funds, (*i. e.*, loss on sale of cargo,) etc.

The American rule on this subject is stated as follows, in a work of high authority:

"Whatever the nature of the original injury, whether from a voluntary sacrifice or a mere peril of the sea, the wages and provisions of the crew, from the time of putting away for the port, and every other expense necessarily incurred during the detention for the benefit of all concerned, are general average." Abbott Shipping, (running page 601, 602,) Story's note. Judge S. says, the reasoning of our courts follows out the doctrine of Lord Ellenborough in Plummer *vs.* Wildman, (3 M. & Selw., 482,) quoted *ante*, p. 27. (See also cases cited by him in his note 601, 602; Walden *vs.* LeRoy, 2 Cai. R., 262, etc.; Henshaw *vs.* Marine Insurance Company, 2 Cai. R., 274.)

The only exception possible, in any view of this case, is, of so much of the repairs as were not necessary to enable the

ship to continue her voyage. In other words, whatever repairs were made, over and above those required to remove her incapacity to proceed, will be considered as having inured to the benefit of the ship alone, and to be borne by her only. (See Plummer *vs.* Wildman, (2 M. & Selw., 482,) where the rule is fully stated, with the exception, by all the judges, pp. 486, 487, 488.)

The rule is stated on somewhat different principles by Phillips, (2 Ins., § 1300.) He makes the test to be, how much of the repairs are temporary in their nature, and how much are permanent.

For our argument, it is not very material which view is adopted; the agreed statement being expressly, that the expenses incurred at Montevideo were "necessary to enable the ship to resume her voyage."

This doctrine has been asserted more or less distinctly in a great number of cases. For instance:

a. Wages and provisions of master, officers, and crew, are general average from the moment of deviation until the ship resumes her course. (Walden *vs.* LeRoy, 2 Cai., 262, *vide* decision of court per Kent, C. J., 264, 266; 3 Kent Comm., *235, 236.)

b. Expenses of unloading, warehousing, and reloading the cargo, for the purpose of repairs. (Bedford Commercial Insurance Company *vs.* Parker, 2 Pick., 8, 9; 3 Kent Comm., *235, 236; Barker *vs.* Phœnix Insurance Company, 8 Johns., 318, 319; Henshaw *vs.* Marine Insurance Company, 2 Cai., *274, and *vide* 277, 278, 279, showing what was decided in that case.)

Upon this point it may be observed that in this case, unloading, etc., the cargo was obviously essential to preparing the ship for the repairs. Counsel's suggestion that the unloading, etc., of the cargo was necessary for *its* preservation, so far from furnishing a reason for bringing that expense into general average, would seem to furnish one against it, and for charging it on the cargo alone.

Besides, no such reason is suggested in any book of authority.

c. Wages and provisions of the workmen employed in making the repairs, it is said, are general average. (Da Costa *vs.* Newnham, 2 Term R., 407, 412, 413, 414; this case approved on this point by Kent, C. J., in Walden *vs.* LeRoy, 2 Cai., *264, 265.)

d. Towing the ship into port and about it for repairs, pumping to keep her afloat, etc., raising her from the bottom, etc. (2 Phill., § 1326; Orrok *vs.* Commonwealth Insurance Company, 21 Pick., 469, 470; Sewall *vs.* United States Insurance Company, 11 Pick., 90; Acc. Potter *vs.* Ocean Insurance Company, 3 Sumn., 45; Sewall *vs.* United States Insurance Company, 11 Pick., 90) In these cases such expenses were held not subject to the deduction of one-third new for old, not being any permanent benefit to the ship.

e. Surveys, port charges, hire of anchors, cables, boats, etc., for temporary purposes, etc. (2 Phill., § 1326; 21 Pick., 469, 470, *ubi sup.*)

The expenses of heaving down, etc., preparatory to the repairs, and of the staging during the repairs, should be brought into the general average for these reasons:

1. They are incidental to the repairs, but not a part of them. They stand on the same ground with the expenses of unloading, warehousing, and reloading the cargo; and no just reason exists for discriminating between them.

2. *Some* repairs were essential to enable the ship to continue her voyage. The damage being to her bottom, these could not have been made to any extent, however slight, without heaving down, the use of staging, etc. These expenses must have been incurred, at all events, for the general benefit, consequently are general average. (Plummer *vs.* Wildman.) This, doubtless, is a reason of bringing into general average most of the other expenses acknowledged to belong to it, as unloading, etc.

The doctrine urged by opposite counsel seems to go upon the principle that the expenses of heaving down, staging, raising money, etc., being necessary incidents of a repair which in itself was a particular average, follow it.

This distinction is examined and repudiated in Walden *vs.* Le Roy, (2 Cai., *265.)

3. The cost of raising funds in Montevideo is general average.

The actual disbursements at Montevideo were, as shown by schedule A, commissioner's report, $35,359 90. The cost of raising the money in consequence of loss on the goods sold for the purpose at that port (statement of facts, trans., fol. 226,) was $64,567 12. (Footings of schedule C, commissioner's report, trans., 277.)

Whatever may be the rule as to the actual disbursements, it seems clear enough that the cost of raising funds to defray them should come into general average.

It is conceded that marine interest comes into general average in all cases. (2 Phill., § 1326.) That is undoubtedly in the nature of an expense of raising funds.

Giles *vs.* Eagle Insurance Company (2 Metc., 140, 142, 144) seems sufficiently in point. A loss on a quantity of salt sold to raise funds, the captain having no other means, was brought into general average.

The third exception should have been allowed.

PART THIRD.

In calculating the amount, $26,469, entered up in the decree in favor of the libellant, Annan & Co , in the first above-entitled libel, there was a serious error of figures. The amount of $26,177 80, due by the libellants as charterers of the ship, was not fully deducted from any amount found due them in average from the ship, as provided by the "agreed statement." (Transcript, fol. 230, 231.) Correcting this error, the decree should be for $4,291 13, and should now be reduced to that amount. (See *ante* p. 4.)

This error of figures is clear, from the proofs upon the motion to correct the decree. (*Ante*, p. 4.) These proofs are, 1st, the affidavits of the commissioner to whom the case was referred, the agent of the ship in San Francisco, the proctors

on both sides, save one deceased, and an average adjuster of the best reputation; and, 2d, the adjustment of the average and schedules connected therewith, reported by the commissioner, and upon which alone the figures of the decree should have been made up. (Transcript, pp. 149 to 181, 200 to 286.)

These accounts, tables, &c., of necessity furnish the materials for ascertaining and correcting the error. (Affidavit of Cazneau, adjuster, transcript, fol. 395, 396, 397.)

See, for the fact of the mistake, transcript, fols. 352, 365, 366, 400, and the circumstances under which it occurred. (Trans., fols. 347 to 356, affidavit of E. P. Flint, agent of the ship.)

It is unnecessary on this part of the appeal to add anything more, except to refer to the transcript, as above cited, containing the proofs as to the error of figures.

E. CASSERLY,
Counsel for Appellant.

SUPREME COURT,
December term, 1869.

SUPREME COURT OF THE UNITED STATES.

WILLIAM C. ANNAN ET AL., LIBELLANTS AND APPELLEES,

ADS.

THE SHIP "STAR OF HOPE," &c., CLAIMANTS AND APPELLANTS.

STATEMENT AND POINTS FOR APPELLEES.

SUPREME COURT OF THE UNITED STATES.

WILLIAM C. ANNAN *et al.*, *Libellants and Appellees,* *ads.* THE SHIP STAR OF HOPE, &c., *Claimants and Appellants.*	*Statement and Points for Appellees.*

STATEMENT.

In this case the libellants (as to whose decrees appeals have been taken) claim the value of certain cargo shipped by them and which they allege was never delivered, (fol. 2.)

The answer, (fol. 146, p. 60,) sets up, that the vessel was chartered by the libellants Annan, &c, and that the rights of the parties were to be governed by the charter; that charter is at fol. 160, p. 65. The charter expressly provides (160), that the party of the first part doth engage that the said vessel on and during the voyage *shall be kept staunch, well fitted, tackled, and provided with every requisite, and with men and provisions necessary for such a voyage.*

This charter contains no exceptions of the seas, acts of God, or otherwise.

Before the Court below passed on the case on motion of the claimants counsel, the libellants assenting, the causes were referred, (see p. 92, fol. 216,) to a commissioner to adjust certain accounts under an agreed state of facts, (fol. 221, p. 94.)

To the commissioner's report, which is at p. 100, fol, 235, both parties filed exceptions. Claimants at p. 107. fol. 245. Libellants at p. 105, fol. 243.

The hearing on the merits really was had when the commissioner's report and exceptions came in. On this hearing the decree was in favor of the libellants, (see p. 109, fol. 248.) The real question heard was as to the right of contribution to the expense incurred by the disaster.

In addition to this, the Court is asked to open the decree below, and restate the amount on a statement that some red book was omitted, no allegation was made in the District Court in the matter.

Appellees claim that the decrees should be affirmed.

POINTS.

First.—The decision of the learned Judge below is full and exhaustive on the only point raised by the claimants before him, and it would be useless to add any argument to sustain it, we content ourselves by referring to the decision and authorities stated.

Second.—In this opinion the Court assumed that if a certain state of facts existed, in regard to the stranding of the vessel, the cargo would have to contribute.

We say that outside of the ground on which the Court held with us the decrees should be affirmed, because, by an express contract, to wit, the charter party, the owner of the vessel expressly undertakes to keep the vessel in the condition she should be at his own expense, the charter makes no exception, it undertakes to do all this work themselves. There is no law to prevent him making this contract, and the contract is a fair one.

Taking this view of the case, what part of the repairs should we contribute to? Why should we make contributions to what they were bound to do?

We can ask this principle to sustain our decree, because, if the principle gives us more than the court below did, it will at least sustain what we have got.

2 Kernan 561. 2 Duer 285
1 Blatch CC 360.

Third.—No question can be raised here that the party had the right to raise and failed to do below to disturb the decree here, and it is clear that all the questions attempted to be raised here except the question of contribution are not in a situation to be raised.

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1st. The cases of the Commander-in-Chief, ~~Black~~, and other cases, are clear that the points of exception must fairly be raised to the report.

2nd. The attempt, after years of silence, to open the matter by getting in new facts or old facts not relied on at the time, is not to be favored and should not be allowed.

3d. In this case the parties by the case had the right after the hearing to have another reference to ascertain anything left open. (Fol. 240, p. 102.)

From this report after the decision on the merits the appeal is taken without any request in the District to have the new reference or to change the merits in any way, nor can the Court, after looking at all the proceedings, say that any thing remains open but the general one.

We respectfully submit that the only question that the appeal reaches has been fairly decided against the claimant, and that to open anew all the accounts which the parties had the right to have passed on, the report on which as to items they seemed to be satisfied with, would be contrary to justice between the parties.

The decree ought to be affirmed.

C Donohue
for Appt

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

WILLIAM C. ANNAN *et als.*
vs.
SHIP "STAR OF HOPE," her tackle, &c. } In Admiralty.

OPINION OF HON. OGDEN HOFFMAN, UNITED STATES DISTRICT JUDGE, DELIVERED APRIL 12, 1859.

OPINION.

The facts of this case are contained in the agreed statement on file.

The question presented is: "Did the stranding of the vessel take place under such circumstances as to render the damage and loss consequent thereon a subject of general average contributions?"

It has not been disputed, that in order to bring a loss sustained during the progress of a marine adventure within the definition of general average, it must appear to have been voluntarily incurred for the common safety.

But to render the sacrifice "voluntary," within the meaning of the definition, it will be sufficient if the loss or damage be in any degree the direct result of human agency; if the will of man has, in the least degree, contributed to it, the right to contribution will not be affected by the fact that the pressure of circumstances was such as to leave no alternative. It it enough that a *volonté forcée* has been exercised, and that the act of man has coöperated with the violence of the elements. (Emerigon, ch. 12, sec. 41; Boulay Paty., Dr. Com.

Mart., vol. 4, p. 457; Arrêt of the Court of Rennes, cited in Rogron's ed., Code de Commerce, art. 400; Barnard *vs.* Adams, 10 How.)

But if the act occasioning the loss be voluntary, it is not essential that there should be an intention to sacrifice, at all events, the particular property on which the loss has in fact fallen. Thus, in the case of a jettison, a slipping of cables, or placing a part of the cargo in lighters, there is always a hope, and usually an expectation, that the objects so exposed may be saved. Nor is it in all cases essential that there should have been an intention to expose the particular property which has in fact sustained an injury. If in making a necessary jettison for the common safety, the other merchandize or the ship itself be injured, the latter must be contributed for, although it may not have been intended or anticipated. With respect, however, to damage incidentally occasioned by a jettison, the Guidon de la Mer., (ch. 23, art. 5,) draws a distinction between injury to the cargo and injury to the ship. In the latter case, the damage is not contributed, unless expressly made to facilitate the jettison. The same provision is contained in art. 14 of the Marine Ordinance, and it has been adopted in the Code de Commerce, art. 423.

But, in America, all damage incidentally done to ship or cargo in making a jettison constitutes a part of the amount to be made good in general average. (Magrath *vs.* Church, 1 Caines, 196; 2 Phillips on Ins., sec. 1280.)

With these preliminary remarks, we proceed to consider the question involved in this case.

The counsel for the vessel has embodied the doctrine for which he contends in two propositions:

1. "Whenever, to avoid an imminent danger, common to the 'ship, cargo, and the lives of those on board, the ship is intentionally or purposely exposed by the master to a distinct 'and extraordinary peril, out of the usual course of naviga-

'tion, and of the ship's duties as a common carrier for the 'voyage, any loss or damage to the ship incidental thereto 'is a subject of general average contribution.

2. "It is immaterial though this loss or damage is other or 'greater than was expected by the master, or whether it was 'wrought directly and immediately by the act of exposure, or 'incidentally by reason of the ship being placed in a situation 'which made her liable to the injury."

All the cases and text-writers agree that, to make a loss or damage by stranding a subject of general average, the stranding must be voluntary or purposely done.

The question then presented by the foregoing general propositions, as applied to the circumstances of the case at bar, may be stated as follows: Is the accidental stranding of a vessel to be deemed a voluntary or intentional stranding within the meaning of the law, when it appears that the stranding was either directly or incidentally occasioned by the intentional exposure of the vessel to extraordinary perils, out of the usual course of navigation and of the ship's duties as a common carrier?

It is truly observed, in the able and ingenious brief submitted by the advocate for the ship, that the whole law of general average is but a series of analogous equities drawn out from an original principle.

The case chiefly relied on by the counsel for the vessel, as establishing the principle for which he contends, is that of goods placed in lighters to relieve the ship and cargo from an imminent peril. These if lost are contributed for. It is argued, that there is no intention to sacrifice or destroy goods so placed, but only to expose them to an extraordinary risk, and if damage ensue, they are contributed for because of this exposure. Hence, it is said that if the ship, as in this case, be similarly exposed, any damage thereby occasioned should be made good in general average.

It must be admitted, that neither in the case of goods placed in lighters, nor even when goods are jettisoned, nor when the ship is voluntarily stranded, is there an intention, at all events, to destroy the objects exposed to the extraordinary peril—nor is such an absolute intention or expectation an element of the equity of an average contribution.

"It is," says Mr. J. Washington, in Caze *vs.* Reily, (3 Wash. C. C. R., 298,) "the motive for the act in relation to the 'rest of the property, and not the intention of the act in rela-'tion to the fate of the thing sacrificed, or exposed to danger, 'which gives rise to the law of contribution."

But the case of goods placed in lighters is, in some respects, distinguishable from the case at bar.

The rule, with respect to goods placed in lighters, is contained in the Digest, and embodied in the Marine Ordinance, Art. 19, title du Jet.

The reason of the rule is thus explained by Emerigon:

"The merchandise so placed in boats is treated as if it had 'been thrown into the sea to save the ship and the rest of the 'cargo;" or in the words of the Digest, "*proinde tanquam si 'jactura facta esset.*"

It is apparent that it can make no difference, in principle, whether the goods, on being taken out of the ship, are at once committed to the waves; or, in the hope of saving them, are placed in boats which are lost. It is as if, when a cable has been voluntarily cut for the common safety, a buoy should be attached to the anchor in the hope of recovering it; or as if barrels, or other articles not liable to damage by wet, should be marked, so that when jettisoned at the entrance of a harbor they may be identified and recovered.

But, in these and like cases, there is the voluntary and deliberate selection of a part of the cargo to bear the burden of a risk common to all. The loss is the immediate and necessary consequence of the risk to which it has been purposely

subjected; and, what seems to distinguish the case from that under consideration, there is no obligation, on the part of the shipper of the goods selected for the jettison, to take any peculiar risk upon himself for the benefit of other shippers.

But the carrier is bound, by his contract, to assume many risks, and to use all possible efforts for the safe transportation of the goods confided to him.

In the correct appreciation of the nature and extent of this obligation, the difficulty of this and other cases which have given rise to much diversity of opinion chiefly consists.

But a case much more nearly analogous to that under consideration is presented by the loss of sails, or spars, by reason of a press of sail carried to escape pirates or shipwreck.

The Ordinance de la Marine provides, in art. 1, lib. iii, tit. viii. *Si par tempête ou par chasse d'ennemis ou de pirates le maître se croit obligé de couper ou forcer ses mâts,*" he shall take advice of his crew, etc.; and, on this article Valin observes, that whether, in such case, the masts be cut or carried away, it is a common or gross average; and so if, to avoid capture, the master carries a press of sail, and the mast breaks and the sails are lost, it is common average.

The Guidon de la Mer, ch. v., art. 21, lays down the same rule with regard to sails "abandoned to the force of the winds." And Emerigon, (chap. xii, § xli,) approves the rule of the Ordounance and the Guidon, and cites a sentence in conformity with it, rendered by the Admiralty in 1751, as also the opinion of Targa to the same effect. Boulay Paty (Dr. Com. Marit., tom iv, p. 446) states that, in the project of the Code de Commerce, the commission had retained the word "*rompu,*" (carried away,) in addition to the word *coupé*, (cut away,) but it was, on the representation of the merchants of Havre and Caen, suppressed, on the ground that the breaking of a cable or a mast is an accident of the sea. The legislature, however, restored the word, and it now ap-

pears in art. 400 of the Code. Boulay Paty approves the determination, and observes that it may happen, under certain circumstances, "that a mast is carried away for the common safety."

He does not, however, discuss the question whether the voluntary exposure of the mast and sails to the risk of being carried away constitutes a *voluntary* sacrifice of them, (if they be lost in consequence,) within the meaning of the rule; nor whether, to avoid tempest or capture, the carrier is not bound by his contract and paid by his freight to expose the equipments of his vessel to such extraordinary risk as the extraordinary peril may render necessary.

Mr. Benecke (Benecke & Stevens, p. 115) inclines to the opinion, that losses of this description ought not to be admitted in general average, on the ground that, though it is admitted that the master is not bound to *destroy*, at the shipowner's expense, any part of the vessel or her furniture, yet it is impracticable to decide with precision to what extent the master is bound to *expose* his vessel, and when that obligation ceases; that every exertion short of the actual *destruction* of the vessel or her furniture lies within the bounds of the carrier's obligation; and that, if the claim for crowding sail be allowed, an opportunity will be offered to bring into general average what is either a particular average on the vessel or mere wear and tear.

He adds, that he has seen some French statements, made since the Code de Commerce, in which damage by crowding sail was not admitted as a subject of contribution.

But in England the question is finally settled adversely to the claim for contribution by judicial decision. (Covington *vs.* Roberts, 2 New R., 368.)

Mr. Phillips (on Ins., p. 82, vol. 2) observes that the question is nice and difficult, but concludes that the loss seems rather to belong to particular than general average.

The same diversity of opinion exists in the nearly similar case of the loss of cable and anchor by anchoring, of necessity, under extraordinary circumstances, on an unusually dangerous place. Mr. Phillips seems to consider (vol. 2, p. 81) that if the anchor be lost under these circumstances, by the parting of the cable or its being chafed off by the rocks, it is particular average. It is only when the cable is intentionally cut or slipped that the loss becomes a general average loss.

Another instance of loss or damage, consequent upon a voluntary exposure to extraordinary risks for the common safety, is afforded in the case of damage to the ship, and expense of ammunition expended, and of curing the crew of wounds received in fighting for the common defense.

As to the damage done to the vessel, the foreign authors are not agreed. Emerigon (ch. 12, sec. 41) is of opinion that it is particular average, and he cites Casa Regis and Cleirac to the same effect. Valin, on the contrary, (tit. des Avaries, art. 6,) thinks that damage suffered by either ship or merchandize, in fighting to avoid capture, is a general average loss; though Kuricke and Casa Regis, he remarks, are of a different opinion. Mr. Benecke (page 155) inclines to Valin's opinion, as also Mr. Phillips, (on Ins. vol. 2, p. 88.) The expense of curing seamen wounded in the defense of the ship is, by the marine ordinance (art. xi) expressly enumerated among the subjects of general average contribution, and the same provision is adopted in the Code de Commerce, (art. 400.) But in England it has been decided, after elaborate argument, that neither the expense of repairing the vessel, nor of ammunition expended, nor of curing the wounded, are to be considered as general average. (Taylor *vs.* Curtis, 6 Taunt., 608.)

The determination of the point would seem to depend upon the question whether the damage by the shot of the enemy is to be treated as an accident of the sea, (*fortune de mer,*) and an occasion of external causes, like damage caused by tempest, lightning, etc., or whether it is to be viewed as volun-

tarily incurred for the common safety, inasmuch as it was the consequence of a deliberate determination to resist.

But the contrariety of opinion on the subject amongst foreign jurists serves to illustrate the difficulty of precisely defining in what cases a damage not itself voluntarily incurred, but the consequence of a risk voluntarily incurred, is to be deemed voluntary within the meaning of the law, as also that of defining the precise limits of the carrier's obligation to exert himself to the utmost, and at his own expense, for the fulfillment of his contract to safely transport and deliver.

It is unnecessary to review at length the various provisions of foreign codes and the opinions of foreign jurists on the subject of expenses incurred in entering a port of distress. They are cited at length by Mr. Benecke, in his treatise, (p. 117, *et seq.;*) and the provisions of the Code de Commerce are acutely, and it would seem justly criticized by De Fremery. (Etud. de Dr. Comm., p. 195.) It is sufficient to say, that the Code de Commerce enacts that charges incident to going into port to repair damages occasioned by an accident of the sea shall be particular average. But if the damage to be repaired is itself a general average loss, the incidental expenses of going into port are, like the damage itself, to be paid for by a contribution.

The English law, however, treats the expense of going into port to repair either kind of damage as an expense voluntarily incurred, and to be contributed for in general average, while the American law brings into general average not only these expenses, but the wages and provisions of the crew from the moment of deviation. (Walden *vs.* Le Roy, 2 Cairnes, 267; 8 Johns., 307; 4 Mass., 548; 2 Phillips on Ins., art. 1328.)

As to the wages and provisions, a contrary rule prevails in England. (4 M. and S., 114; 2 Phil., *ubi sub.*, and cases cited.)

It is unnecessary to inquire which of these rules is most in

accordance with general principles, or how far what Benecke calls "the perverse practice of bringing into general average the seamen's wages, paid during the repairs of a particular average of the ship," may have been adopted in America from considerations of practical advantage, and as an inducement to the master to seek a port of distress whenever necessary or even expedient for the interests of all concerned. (See De Fremery, p. 217.)

The subject has been adverted to as an additional illustration of the difficulty of determining in all cases the points before mentioned, viz: when a damage or expense can be called voluntary; and what are the extent and nature of the carrier's obligations for the discharge of which he has no remuneration but the freight

With regard to losses or damage by stranding, all the books and cases agree that the stranding must be voluntary.

Whether under the particular circumstances a stranding is to be considered voluntary, or as the direct and unavoidable consequence of the action of the elements, is, says Mr. Phillips, frequently a very difficult question.

The cases of Caze *vs.* Reilly, (3 Wash. C. C. R., 298;) Col. Ins. Co., *vs.* Ashby, (11 Pet., 331; Sims *vs.* Gurney, (4 Binney, 5–13;) and Gray *vs.* Waln, (2 Serg. & Rawle, 229,) have been cited and relied on by counsel for the vessel as decisive of the present case. In that view however I have been unable to coincide.

The principles established by those cases which have any bearing on the case at bar seem to be:

1. That the intention to consign to inevitable loss the objects (whether the goods or the ship) which are selected to bear the burden of the risk forms no element of the right to contribution. This principle is expressly declared by the Supreme Court in Barnard *vs.* Adams (10 How., p. 304,) and is not

denied in the present case. "The right to contribution is not made to depend on any real or presumed intention to destroy the thing cast away, but on the fact that it has been selected to suffer the peril in the place of the whole, that the remainder may be saved." (10 How., *ubi sub.*)

2. It is also decided in these cases, that where a ship has been voluntarily stranded, the circumstance that she is thereby lost strengthens rather than destroys her claim for contribution against the cargo saved by the sacrifice.

3. That though the vessel may have been in the most imminent danger of being stranded by the force of the elements, yet, if the actual stranding is the immediate result of human agency, and is different from the one impending, and effected for the common safety, the case if one for general average.

But in all these cases the actual stranding as it occurred was intentional. The doubt arose from the fact that a stranding of some kind was imminent, if not inevitable, and that the volition of the master was exercised merely in the selection of a less dangerous part of the shore whereon to strand his ship.

But in the case at bar it was no part of the master's intention to strand the vessel. The stranding was not only involuntary but unexpected, except so far as he was aware that in attempting to run into an unknown harbor he incurred that risk, amongst others, and that it was the chief risk he encountered. That he voluntarily subjected the vessel and cargo to whatever risks such a course involved cannot be doubted, but it is equally clear that he did not voluntarily and intentionally strand his vessel, that is, that the stranding was not the immediate and direct result of an intention to effect that particular object.

The cases then which have been cited when their circumstances are examined do not establish the principle contended for. The nearest approach to that principle, which after

somewhat diligent research I have met with, is found in Rogron's edition of the Code de Commerce, note to art. 403. An arrêt of the court of Aix is there cited as follows:

"Considering that, with reference to the stranding, if we are to regard it independently of its antecedents, it would be porticular average, since it was not immediately voluntary ('immediatement volontaire.') Yet, inasmuch as it cannot be separated from the circumstances under which it took place, that reason suggests, and it is established by the authors (Pardessus, Dr. Comm., tit. 2, p. 170; and Boulay Paty, Droit Marit. tom. 4, p. 455,) that a stranding is common average when it is the consequence and effect of the loss of an anchor, a cable, cordage, or other objects which had been sacrificed the day before for the common safety and which the captain went on shore with the object of replacing; that the stranding was the consequence and effect of this absence of the captain, without whom the ship could not have gone to sea; considering that by an analogy to art. 268 of the Code de Commerce, the expenses of going ashore by a master are common average, when his landing has for its object the common safety, and that in fact, Capt. Duff, in this instance, went ashore for the common safety, &c., &c., therefore that the losses incurred by stranding, with the necessary incidental expenses, (wages and provisions,) are to be deemed common average."

In this case, it will be observed that the stranding was not the immediate and direct effect of the volition of the master. It was directly caused by the force of the elements, but the decision is based on the ground that it was the immediate consequence and effect of a voluntary sacrifice, namely, the slipping of a cable and anchor, and the landing of the master for the common safety. In the passage from Boulay Paty, referred to in the foregoing arrêt, that author, after speaking of the case where the master adopts the course (*prend le parti,*) of stranding his vessel, says: "But a stranding occasioned by any other event, even fortuitous, or of vis major, will only produce simple average, *unless it has been the consequence and effect of a sacrifice for the common safety.*" But the stranding

in the case at bar was not the effect of a sacrifice for the common safety, in the sense intended by this author, such as the cutting away of a mast, the shipping of a cable, &c.

It may be said that the whole deviation to a port of distress, and especially the entering this port, was a sacrifice for the common safety. But it is evident that such acts could not have been included by Boulay Paty amongst the sacrifices for the common safety to which he alludes. By the French law, as has already been stated, the expenses of entering a port to repair particular average are not contributed for—nor are the wages and provisions of the crew during the detention. It is clear, therefore, that neither the deviation itself, nor the expenses incidental to it, nor the risks incurred in consequence, could have been regarded by Boulay Paty as sacrifices for the common safety.

If, then, an accidental damage of this kind is to be allowed in general average, because it occurred during a voluntary deviation, rendered necessary by a vis major, and therefore is the effect and consequence of a sacrifice for the common safety, the same principle would require that every loss incurred during such a deviation should be contributed for.

Every peril encountered during a deviation is encountered out of the usual course of navigation for the voyage, and might, in a certain sense, be said to be the consequence and effect of a sacrifice made for the common safety. Thus, if the damage consequent upon the voluntary exposure to the dangers of entering an unknown harbor be general average, by parity of reasoning losses arising from directing the ship to parts of the seas where the chances of collision are greatly increased, or to high latitudes, where the risks of damage from icebergs are enhanced, or to stormy and inhospitable coasts, where the damages of shipwreck might be far greater than if the regular and usual course of the voyage had been pursued, might also be contributed; for the practical results of the principle contended for would be, that in all cases of deviation all the interest would be bound to contribute, or

would become the insurers against any accidental damage sustained by any one of them; and mutual relations would be established, very similar to those created by the contract called *agermamento*, mentioned in the Consulate, ch. x, 95, by which the ship and cargo were confounded in a common mass, and all damages sustained were paid for by a contribution.

If it be said that the risk incurred in entering an unknown and unfrequented harbor was extraordinary, I answer:

1st. That in the cases supposed, and in many others, the risks incurred in consequence of a deviation may be quite as great and as much out of the usual course of navigation for the voyage and those incurred by the "Star of Hope."

2d. That it would be impracticable for courts to make the determination of the right to contribution depend upon nice discriminations between different degrees of peril, or to attempt to decide in each case whether the carrier was or was not bound, by his contract, to expose his vessel to the precise degree of risk he encountered; and

3d. That it is better to establish on such a subject a clear and well-defined rule, susceptible of general application, than to make the decision depend upon uncertain estimates of the degree of risk encountered, and thus give rise to many unfounded claims and to incessant litigation.

An additional argument against the principle contended for on behalf of the vessel is found in the fact that it is nowhere, so far as I can discover, suggested in any case, or by any author, though the occasions for its application must be of frequent occurrence. It is true that Magens states (cited in 2 Phillips, art. 1334) that if a vessel be frozen up in a port where the master has put in voluntarily to repair, the expenses of her detention from that cause are general average; but he does not include in general average the damage

occasioned to the vessel by ice, and the case seems identical in principle with that of wages and provisions of the crew during a deviation, which, as we have seen, are allowed in America, or that of expenses incurred by a voluntary lengthening of the voyage, or deroutement, which Emerigon says ought to be allowed. (Traité des Ass., ch. xli, p. 609.) It may be doubted, however, whether all such expenses, though incurred for the common benefit, do not fall within the carrier's obligation to keep his vessel staunch and tight, and to furnish her with mariners and provisions during the whole voyage at his own cost and charges. (See dissenting opinion of Mr. J. Livingston, in Walden *vs.* Leroy, 2 Caines, p. 262.) But, at all events, whatever disposition be made of the expenses of wages and provisions, during a detention or deviation to repair, particular average, no case has yet determined that accidental damage, *to the risk* of which the deviation has exposed the vessel or cargo, should be contributed for in general average; and especially in the case of loss or damage by stranding, the language of the American and English cases and books is uniform, that to make a stranding a general average loss it must be the immediate result of the act and volition of man, directed toward that particular object. Even if the rule be extended to the case mentioned by Boulay Paty and Pardessus, it will still be confined to the case of a stranding, which, though unintentional at the moment, is nevertheless the immediate and direct effect and consequence of an intentional sacrifice for the common safety, such as cutting away a mast, slipping a cable, etc. It will not include the case of an accidental stranding, which was the consequence of risks incurred by deviating to repair damages occasioned by a vis major or *cas fortuit*, which is the case at bar.

My opinion on the whole is, that although, when a part of the cargo is selected from the rest to be subjected to an extraordinary peril, as by being placed on lighters, the loss of it in consequence must be contributed for, yet the same principle does not appy to the ship; for the carrier is bound by the con-

tract to expose his vessel and her furniture to extraordinary dangers, if necessary, though not actually to destroy them.

That sails or masts carried away by crowding sail, or anchors lost by anchoring in a rocky or dangerous place, are not allowed for in general average by the courts in England, nor considered proper subjects for contribution by the American or English text writers.

That though the expenses of entering a port to repair particular average are contributed for in England and in America even the wages and provisions of the crew during the deviation, it has been never held that risks incurred by such a deviation are assumed by all the interests; nor that when they are different and greater than those incurred in the ordinary course of navigation for the voyage, a loss in consequence is to be contributed for; and, lastly, that all the cases and writers, both American and foreign, agree, that to make a loss by stranding a general average loss, it must have been voluntary, or the immediate effect of a resolution to effect that object, with the single exception of the case mentioned by Boulay Paty, where the stranding is the effect and consequence of a previous sacrifice for the common safety, such as the cutting away of masts, abandoning an anchor, etc., which is not the case at bar.

I think, therefore, that the damage by the stranding of the "Star of Hope," under the circumstances mentioned in the statements of facts, ought not to be allowed in general average.

I have given to this case much consideration. In the investigation of the subject, I have been forcibly reminded of the remark of De Fremery, the ingenious and acute writer whose work has already been referred to. "Nothing," he says, "is more precise than the universally recognized principles of a common average, and yet nothing is more difficult in very numerous cases than to apply them." (Etud. de Droit Comm., p. 204.)